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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS–DA–15–0068]

National Dairy Promotion and Research Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Announcement of finding.

SUMMARY: The Agricultural Marketing Service (AMS) hereby gives notice that no changes will be made to the current distribution of domestic National Dairy Promotion and Research Board (Dairy Board) members in 12 regions as outlined in Section 1150.131(b) of the Dairy Research and Promotion Order (Dairy Order). The Dairy Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States (U.S.) and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of domestic members from the regions in order to better reflect the geographic distribution of milk production volumes in the U.S. The number of domestic Dairy Board members was last modified in 2011 based on 2010 U.S. milk production.

DATES: *Effective date:* September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Jill Hoover, Deputy Director, Promotion, Research, and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave. SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233. Phone: (202) 720–6909. Email: *Jill.Hoover@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Production Stabilization Act of 1983 authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the U.S. for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

Section 1150.131 of the Dairy Order (7 CFR 1150.131) provides that the Dairy Board shall review the geographic distribution of milk production throughout the U.S. and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from the regions in order to better reflect the geographic distribution of milk production volume in the U.S. The Dairy Order is administered by a 37-member Dairy Board, 36 members representing 12 geographic regions within the U.S. and 1 representing importers. The number of domestic Dairy Board members was last modified in 2011 based on 2010 U.S. milk production.

Based on a review of the 2014 geographic distribution of milk production, the Dairy Board has concluded that the number of Dairy Board members and regions represented should be maintained. This finding was submitted by the Dairy Board, which administers the Dairy Order.

In 2014, total milk production was 206,586 million pounds and each of the Dairy Board members would represent 5,738.5 million pounds of milk. Table 1 summarizes by region, the volume of milk production distribution for 2014, the percentage of total milk production, and the regions and number of Dairy Board seats for each region.

TABLE 1—REGIONS AND NUMBER OF BOARD SEATS

Regions and states	Milk production (mil. lbs.)	Percentage of total milk production	Current number of board seats
1. Alaska, Oregon, Washington	9,142.5	4.4	2
2. California, Hawaii	42,366.9	20.5	7
3. Arizona, Colorado, Montana, Nevada, Utah, Wyoming	11,594.5	5.6	2
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas	22,319	10.8	4
5. Minnesota, North Dakota, South Dakota	11,560	5.6	2
6. Wisconsin	27,795	13.5	5
7. Illinois, Iowa, Missouri, Nebraska	9,074	4.4	2
8. Idaho	13,873	6.7	2
9. Indiana, Michigan, Ohio, West Virginia	19,066	9.2	3
10. Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia	9,986.9	4.8	2
11. Delaware, Maryland, New Jersey, Pennsylvania	11,893.7	5.8	2
12. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	17,914.1	8.7	3
Total	206,586	100	36

* Milk Production, Disposition, and Income, 2014 Summary, NASS, 2015.
** Puerto Rico—2012 Census of Agriculture, Puerto Rico, Island and Municipio Data, NASS, 2014.

As described in this **Federal Register** document, the current distribution of domestic Dairy Board members in 12 regions, as outlined in Section 1150.131(b) of the Dairy Order, will be maintained.

Dated: September 7, 2016.

Dana Coale,

Associate Administrator.

[FR Doc. 2016–21841 Filed 9–12–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6006; Airspace Docket No. 15–AGL–3]

Modification of Class D Airspace; Peru, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Grissom Army Reserve Base (ARB), IN, to allow for a lower Circling Minimum Descent Altitude, where Instrument Flight Rules Category E circling procedures are being used. This action increases the area of the existing controlled airspace for Grissom ARB, IN. Additionally, this action will add Peru, Grissom ARB, IN to the subtitle of the airspace designation.

DATES: Effective 0901 UTC, November 10, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class D airspace at Grissom ARB, Peru, IN.

History

On June 6, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D Airspace to allow for a lower Circling Minimum Descent Altitude at Grissom Air Reserve Base (ARB), IN (81 FR 36214) FAA–2016–6006. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9Z, dated August 6, 2016, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document modifies FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2016, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action modifies Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class D airspace at Grissom ARB, IN, to within a 5.8-mile radius of the airport. This increase will allow for a lower Circling Minimum Descent Altitude, where Instrument Flight Rules Category E circling procedures are being used. Also, this action adds Peru, Grissom Air Reserve Base, IN, to the subtitle of the airspace designation. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9Z, dated August 6, 2016, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2016, and effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IN D Grissom ARB, IN [Amended]

Peru, Grissom Air Reserve Base, IN
(Lat. 40°38′53″ N., long. 086°09′08″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 5.8 mile radius of Grissom ARB. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Fort Worth, TX, on August 30, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–21709 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2010–0302; Amdt. No. 93–101]

RIN 2120–AK84

Extension of the Requirement for Helicopters To Use the New York North Shore Helicopter Route; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting an error, whereby the applicability of a regulation was extended instead of its effectivity. Consequently, a section of the pertinent regulation was relocated in Title 14, Code of Federal Regulations and all remaining provisions of the regulation inadvertently expired. However, the entire regulation was intended to be extended for four years in the final rule published on July 25, 2016 (Doc. No. 2016–17427, 81 FR 48323), which became effective on August 7, 2016.

DATES: This action becomes effective on September 13, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kenneth Ready, Airspace and Rules Team, AJV–113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3396; email *kenneth.ready@faa.gov*.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the final rule.

This document is correcting an error that is in 14 CFR part 93. This correction will not impose any additional restrictions on the persons affected by these regulations. Furthermore, any additional delay in making the regulations correct would be contrary to the public interest. Accordingly, the FAA finds that (i) public comment on these standards prior to promulgation is unnecessary, and (ii) good cause exists to make this rule effective in less than 30 days and upon its publication in the **Federal Register**.

Background

On July 25, 2016, the FAA published a final rule extending the requirement an additional four years for pilots operating civil helicopters under Visual Flight Rules (VFR) to use the New York North Shore Helicopter Route when operating along the north shore of Long Island, New York. The final rule extended the expiration date of the applicability, rather than the effectivity, to August 6, 2020. Consequently, that error in the final rule resulted in the inadvertent removal of Subpart H of part 93 of Title 14, Code of Federal Regulations (14 CFR). This final rule corrects that error and reinstates the provisions of Subpart H, extending those provisions to August 6, 2020.

Technical Amendment

This technical amendment will correct the current error of § 93.101 being moved to Subpart G, § 93.103 expiring, and Subpart H being reserved. Because this action results in no further substantive change to 14 CFR part 93, we find good cause exists under 5 U.S.C. 553(d)(3) to make this technical amendment effective in less than 30 days and upon its publication in the **Federal Register**.

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14 of the Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44715, 44719, 46301.

■ 2. Add subpart H consisting of § 93.103 to read as follows:

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

§ 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route and altitude, as published.

(b) Pilots may deviate from the route and altitude requirements of paragraph (a) of this section when necessary for safety, weather conditions or transitioning to or from a destination or point of landing.

§ 93.101 [Transferred to Subpart H]

■ 3. Transfer § 93.101 from subpart G to subpart H.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703, in Washington, DC, on September 7, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–21963 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 387

[Docket No. 15–CRB–0010–CA]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: On April 26, 2016, the Copyright Royalty Judges (Judges) published for comment proposed regulations governing royalty rates and terms for the distant retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers. The participants in the proceeding concluded their negotiations and asked for readoption of the cable rate regulations without change. The Judges accepted the negotiated settlement and did not propose any substantive changes to the participants' proposed rates and terms. However, the Judges' proposed regulations updated terms, moved the rules to the chapter of the CFR that includes other applicable rules of the Copyright Royalty Board, and proposed certain other non-substantive changes to make the rules easier to read. The Judges received comments from the Phase I parties on the proposed changes and finding the suggested revisions therein clarified the rule, accepted all of the proposed changes.

DATES: *Effective:* September 13, 2016.

Applicability date: January 1, 2015, through December 31, 2019.

ADDRESSES: The final rule is also posted on the agency's Web site (*www.loc.gov/crb*).

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle, Attorney Advisor, by telephone at (202) 707–7658, or by email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2016, the Copyright Royalty Judges (Judges) published for comment in the **Federal Register** proposed regulations governing royalty rates and terms for the distant retransmission of over-the-air television and radio broadcast stations by cable television systems to their subscribers for the period 2015–2019. *See* 81 FR 24523. The proposal was the result of a settlement between the National Cable & Telecommunications Association, the American Cable Association, and a group referring to itself as the "Phase I Parties."[1] The settlement proposed that the extant rates, terms, and gross receipts limitations remain unchanged through 2019. *See* 17 U.S.C. 111(d)(1)(B) and 37 CFR 256.2(c)–(d). The notice included a request for comments from interested parties as required by 17 U.S.C. 801(b)(7)(A).

The Judges received the following comments on the substance of the proposal from the Phase I Parties:

> Proposed § 387.1, second sentence. The proposed language ". . . a cable system entity may engage in the activities set forth in 17 U.S.C. 111" appears to be vague and overly broad as compared to the scope of the Section 111 statutory license that is limited to "secondary transmissions to the public by a cable system of a performance or display of a work embodied in a primary transmission made by a broadcast station" under certain conditions that are set forth in 17 U.S.C. 111(c). Accordingly, the Phase I Parties suggest the above-quoted language of proposed § 387.1 be changed to ". . . a cable system shall be subject to a statutory license authorizing secondary transmissions of broadcast signals to the extent provided in 17 U.S.C. 111."
>
> Proposed § 387.2(a). The proposed language, "the royalty fee rates for secondary transmission by cable systems are those established by 17 U.S.C. 111(d)(1)(B)(i)–(iv), as amended," is potentially ambiguous in light of the express limitation at the beginning of Section 111(d)(1)(B) that: "Except in the case of a cable system whose royalty fee is specified by subparagraph (E) or (F)." This limitation means that the royalty rates in subsections (i)–(iv) of Section 111(d)(1)(B) apply to only one class of cable systems—those with semi-annual gross receipts of $527,600 or more (commonly known as "Form 3 systems")—not to all "cable systems" as the general reference in proposed § 387.2(a) now suggests. Accordingly, the Phase I Parties suggest that the above-quoted language of proposed § 387.2(a) be modified to incorporate the statutory limitation, perhaps by revising the language to state ". . . by cable systems not subject to § 387.2(b) of these regulations . . ."
>
> Proposed § 387.2(b). The use of "alternate tiered rates" in the title and body of this section is potentially confusing because these rates are not "alternate" rates that might apply to any cable system, but a separate set of rates, established by 17 U.S.C. 111(d)(1)(E) and (F), that apply to cable systems with less than $527,600 in semi-annual gross receipts (commonly known as "Form ½ systems"). In addition, use of the phrase, "tiered rates," could cause some confusion because monthly subscriber fees for cable service are almost universally based on "tiered" bundles of programming services and rates. Accordingly, the Phase I Parties suggest that the title of proposed § 387.2(b) be changed to "Rates for Certain Classes of Cable Systems," and the words "alternate tiered" be deleted from the text of the regulation.
>
> Proposed § 387.2(e). The language, "Computation of royalty fess shall be governed by 17 U.S.C. 111(d)(1)(C)," is potentially confusing because it might be read to suggest that any and all aspects of the royalty fee computation can be determined by reference to Section 111(d)(1)(C). While that paragraph identifies the computation to be used in some specific situations that might apply to some Form 3 systems, it does not address how some other key components (*e.g.*, gross receipts and distant signal equivalent values) of the royalty fee calculation are determined, or how the 3.75 percent rate and syndicated exclusivity surcharge are computer. Accordingly the Phase I Parties suggest that either § 387.2(e) be deleted in its entirety or it be rewritten to state: "Computation of royalty fees shall be governed by 17 U.S.C. 111(d) and 111(f), and 37 CFR 201.17."

Comments of the Phase I Parties on Proposed Rule at 1–3 (May 17, 2016).

In addition to seeking comments on the proposed settlement, the Judges also solicited comments on the Judges' proposed relocation of the regulations to 37 CFR part 387, which includes other applicable rules of the Copyright Royalty Board. The Judges likewise solicited comments on certain non-substantive changes to the regulations to make them easier to read. The Judges received no comments on the editorial proposals.

The Judges' authority to adopt proposed settlements as statutory rates and terms is codified in Section 801(b)(7)(A) of the Copyright Act. That provision of the Act authorizes the Judges to adopt as a basis for statutory terms and rates an agreement concerning such matters reached among "some or all of the participants" in a proceeding "at any time during the proceeding" except that the Judges must provide an opportunity to comment on the agreement to those that would be bound by the agreement. 17 U.S.C. 801(b)(7)(A)(i). In light of the statutory requirements regarding adoption of settlements and the absence of any opposition to the proposed settlement, the Judges find that the proposed settlement (along with the revisions proposed by the settling parties in their comments), which leaves the current rates and terms unchanged and adjusts the regulatory language to improve clarity and precision, provides a reasonable basis for setting statutory terms and rates and, therefore, the Judges adopt the settlement as proposed as well as the improved language.

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[1] The "Phase I Parties" are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants, Music Claimants, Canadian Claimants Group, National Public Radio, and Devotional Claimants.

Moreover, the Judges believe that the proposed change to the placement of the extant regulations (*i.e.,* relocating them to 37 CFR part 387) and the non-substantive changes to the regulations are reasonable and appropriate measures to consolidate related CRB regulations and to make those regulations more comprehensible. Therefore, the Judges adopt the regulations as proposed.

List of Subjects in 37 CFR Part 387

Cable television, Copyright, Royalties.

Final Regulations

■ In consideration of the foregoing, the Copyright Royalty Judges amend 37 CFR chapter III by adding part 387 to read as follows:

PART 387—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

Sec.
387.1 General.
387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

Authority: 17 U.S.C. 801(b)(2), 803(b)(6).

§ 387.1 General.

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system shall be subject to a statutory license authorizing secondary transmissions of broadcast signals to the extent provided in 17 U.S.C. 111.

§ 387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) *Royalty fee rates.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, the royalty fee rates for secondary transmission by cable systems not subject to paragraph (b) of this section are those established by 17 U.S.C. 111(d)(1)(B)(i)–(iv), as amended.

(b) *Rates for certain classes of cable systems.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, the alternate tiered royalty fee rates for cable systems with certain levels of gross receipts as described in 17 U.S.C. 111(d)(1)(E) and (F), are those described therein.

(c) *3.75 percent rate.* Commencing with the first semiannual accounting period of 2015, and for each semiannual accounting period thereafter, and notwithstanding paragraphs (a) and (d) of this section, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal that was permitted (or, in the case of cable systems commencing operations after June 24, 1981, that would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981 (former 47 CFR 76.1 through 76.617 (1980)); or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal; or

(3) A signal that was carried pursuant to an individual waiver of (former 47 CFR 76.1 through 76.617 (1980)); in lieu of the royalty rates specified in paragraphs (a) and (d) of this section, the royalty rate shall be 3.75 percent of the gross receipts of the cable system for each distant signal equivalent. Any fraction of a distant signal equivalent shall be computed at its fractional value.

(d) *Syndicated exclusivity surcharge.* Commencing with the first semiannual accounting period of 2015 and for each semiannual accounting period thereafter, in the case of a cable system located outside the 35-mile specified zone of a commercial VHF station that places a predicted Grade B contour, in whole or in part, over the cable system, and that is not significantly viewed or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 through 76.617 (1980)), for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section:

(1) For cable systems located wholly or in part within a top 50 television market:

(i) 0.599 percent of such gross receipts for the first distant signal equivalent;

(ii) 0.377 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) 0.178 percent of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(2) For cable systems located wholly or in part within a second 50 television market:

(i) 0.300 percent of such gross receipts for the first distant signal equivalent;

(ii) 0.189 percent of such gross receipts for each of the second, third, and fourth distant signal equivalents; and

(iii) 0.089 percent of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter;

(3) For purposes of this section "first 50 major television markets" and "second 50 major television markets" shall be defined as those terms are defined or interpreted in accordance with the Federal Communications Commission rule "Major television markets" in effect on June 24, 1981 (47 CFR 76.51 (1980)).

(e) *Computation of rates.* Computation of royalty fees shall be governed by 17 U.S.C. 111(d) and 111(f) and 37 CFR 201.17.

Dated: June 28, 2016.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved:

David S. Mao,

Acting Librarian of Congress.

[FR Doc. 2016–20529 Filed 9–12–16; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0060; FRL–9945–84–Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of the five State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter ($PM_{2.5}$) and 2008 lead National Ambient Air Quality Standards (NAAQS). The SIP is required to address basic program elements, including, but not limited to: Regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards.

These elements are referred to as infrastructure requirements. In this rulemaking action, EPA is approving, in accordance with the requirements of the CAA, the infrastructure SIP submissions with the exception of some portions of the submittals addressing Prevention of Significant Deterioration (PSD).

DATES: This rule is effective on October 13, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0060. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, or by email at *forde.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

I. What is the background information?
II. What comments did EPA receive in response to its proposal?
III. What action is EPA taking?
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. What is the background information?

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised national ambient air quality standard (NAAQS or standards) for ozone (62 FR 38856) and a new NAAQS for fine particle matter ($PM_{2.5}$) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average $PM_{2.5}$ primary and secondary NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. As required by section 110(a)(1) of the CAA, the 110(a)(2) submittals were due within three years after promulgation of the revised standard.

On March 27, 2008 (73 FR 16436) EPA strengthened its NAAQS for ground-level ozone, revising the 8-hour primary ozone standard to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard.

On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for lead. The Agency revised the level of the primary lead standard from 1.5 $\mu g/m^3$ to 0.15 $\mu g/m^3$. The EPA also revised the secondary NAAQS to 0.15 $\mu g/m^3$ and made it identical to the revised primary standard.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

EPA is acting on five SIP revision submittals from the Commonwealth of Puerto Rico Environmental Quality Board (PREQB) to satisfy the requirements of section 110(a)(2) of the CAA for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS. On November 29, 2006, PREQB submitted SIP revisions addressing the infrastructure requirements for the 1997 ozone and $PM_{2.5}$ NAAQS. On January 22, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. On January 31, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2008 lead NAAQS. On April 16, 2015, PREQB supplemented the January 22, 2013 submittal for the 2006 $PM_{2.5}$ NAAQS. On February 1, 2016, PREQB submitted additional provisions for inclusion into the SIP which address infrastructure SIP requirements for 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS. Each of the infrastructure SIP submittals addressed the following infrastructure elements for the applicable NAAQS which EPA is approving pursuant to section 110(a)(2) of the CAA. Specifically sections 110(a)(2)(A), (B), portions of (C), portions of (D), (E), (F), (G), (H), portions of (J), (K), (L), and (M) for the 1997 and 2008 ozone, 1997 and 2006 $PM_{2.5}$ and 2008 lead NAAQS.

II. What comments did EPA receive in response to its proposal?

In response to EPA's proposed approval of Puerto Rico's SIP revision, a comment was received from one interested party. The comment and EPA's response are as follows:

Comment

The comment asserts that the proposed rule is confusing and hard to follow. The comment states that PREQB made 5 revisions over the past 11 or so years and that the last public meetings were 5 years ago. The comment states that this piecemeal approach is not useful for the public to follow and that EPA's explanation about why it is justified in accepting this approach is hard to understand. Commentor notes that the examples of New Mexico and Tennessee cover much shorter timeframes. Commentor states that the purpose of the current SIP is to show PREQB can implement, enforce and maintain the NAAQS covered by the SIP and asks how have they proven this. The comment references a newspaper article and states that the Puerto Rico Electric Power Authority (PREPA) is the main polluter on the island and that it is embroiled in scandal related to burning substandard fuel that calls into question the records submitted and the roles of PREQB and USEPA. Commentor asserts that it is not clear the PREQB is capable of enforcing the SIP and protecting our air and health of our citizens.

Response

EPA disagrees that PREQB is taking a piecemeal approach to revising the SIP. Under CAA sections 110(a)(1) and 110(a)(2), each state is required to submit a SIP that provides for the implementation, maintenance, and enforcement of each primary and secondary NAAQS. Moreover, CAA sections 110(a)(1) and 110(a)(2) require each state to make this new SIP submission within 3 years after promulgation of a new or revised NAAQS. In addition, EPA is proposing action on these SIP revisions simultaneously, and not separately, since each SIP revision addresses the infrastructure requirements of the CAA. PREQB provided the necessary public notice and public hearings for each SIP revision as required by the CAA. Public hearings were held by PREQB for the lead infrastructure SIP on October 10, 2011. Public hearings were held by PREQB for the ozone and $PM_{2.5}$ infrastructure SIPs on December 19, 2011. With respect to public hearings, EPA's proposed approval is not based on how many public meetings PREQB holds, or how long ago the last one was held. Rather EPA's proposed approval is based, in part, on PREQB's ability to hold a public hearing on each revision to the SIP.

The proposed timeframes for other state SIP actions have no bearing on EPA's proposed approval of Puerto Rico's SIP submittal. Footnote 4 of the proposal cites New Mexico SIP actions as an example in support of EPA's statement, in the proposal, "If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action." 81 FR 8457. Similarly, footnote 5 of the proposal cites Tennessee SIP actions as an example in support of EPA's statement in the proposal that, "EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submittal." 81 FR 8457.

Commentor is referred to the technical support document (TSD) in the docket for this matter which describes in detail PREQB's procedures for implementing, enforcing and maintaining the NAAQS. EPA's proposed approval is based on PREQB having these procedures in place. Finally, EPA is not a party to and cannot comment on the ongoing litigation that the Commentor cites with respect to PREPA.

III. What action is EPA taking?

EPA is approving Puerto Rico's infrastructure submittals dated November 29, 2006, January 22, 2013 and January 31, 2013, and supplemented April 16, 2015 and February 1, 2016, for the 1997 ozone and $PM_{2.5}$, 2008 ozone and 2006 $PM_{2.5}$, and 2008 lead NAAQS, respectively, as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C)(with the exception of program requirements for PSD), (D)(i)(II) (with the exception of program requirements related to PSD), (D)(ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

EPA is incorporating by reference Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D., approved September 22, 2004 and effective six months after its approval and Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports," (approved January 3, 2012 and effective January 1, 2012, except for Sections 5.5(a) and 5.8(a), which became effective 180 days after the effective date), for inclusion into Puerto Rico's SIP. These provisions are intended to apply to any person subject to CAA section 128, and are included in the SIP to address the requirements of CAA sections 110(a)(2)(E)(ii) and 128 for the 1997 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 lead, and 2008 ozone NAAQS.

EPA is disapproving the following infrastructure SIP requirements as they relate to the PSD program because Puerto Rico lacks a State adopted PSD rule to satisfy CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) for the 1997 and 2008 ozone NAAQS, 1997 and 2006 $PM_{2.5}$ NAAQS, and 2008 lead NAAQS. It should be noted that a Federal Implementation Plan (FIP) clock will not be started because a PSD FIP is currently in place, and sanctions will not be triggered. Since Puerto Rico is not required to address the visibility portion of section 110(a)(2)(J) in the context of an infrastructure SIP, and therefore did not make a submission, action on this sub-element is not applicable.

A detailed analysis of EPA's review and rationale for approving and disapproving elements of the infrastructure SIP submittals as addressing these CAA requirements may be found in the February 19, 2016 proposed rulemaking action (81 FR 8455) and Technical Support Document (TSD) which are available on line at *www.regulations.gov,* Docket ID Number EPA–R02–OAR–2016–0060.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Commonwealth of Puerto Rico Statutes described in the proposed amemdments to 40 CFR part 52 set forth below.

EPA is incorporating by reference Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D., approved September 22, 2004, and Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports," approved January 3, 2012, for inclusion into Puerto Rico's SIP to address the requirements of CAA sections 110(a)(2)(E)(ii) and 128.

The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations* (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 2, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

Editorial Note: This document was received for publication by the Office of the Federal Register on August 31, 2016.

For the reasons set forth in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BBB—Puerto Rico

■ 2. Section 52.2720 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Puerto Rico Environmental Quality Board (EQB) on November 29, 2006, and supplemented February 1, 2016 for the 1997 ozone and $PM_{2.5}$ NAAQS; dated January 22, 2013, and supplemented April 16, 2015 and February 1, 2016 for the 2006 $PM_{2.5}$ and supplemented February 1, 2016 for the 2008 ozone NAAQS; and dated January 31, 2013 and supplemented February 1, 2016 for the 2008 lead NAAQS.

(*i*) *Incorporation by reference.* These provisions are intended to apply to any person subject to CAA section 128, and are included in the SIP to address the requirements of CAA sections 110(a)(2)(E)(ii) and 128.

(A) Act 416 (Commonwealth of Puerto Rico's ''Environmental Public Policy Act''), Title II, ''On the Environmental Board,'' Section 7, ''Creating the Board; Members; Terms,'' sections A. and D., approved September 22, 2004;

(B) Act 1 (''Puerto Rico Government Ethics Act of 2011''), Chapter V, ''Financial Reports,'' approved January 3, 2012.

■ 3. Amend § 52.2723 by revising the section heading and the title of the table and adding a heading and the entries ''Act 1'' and ''Act 416'' at the end of the table to read as follows:

§ 52.2723 EPA-approved Puerto Rico regulations and laws.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION AND PUERTO RICO LAWS

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
* *	*	* *	* *
		PUERTO RICO LAWS	
Act 1 ("Puerto Rico Government Ethics Act of 2011"), Chapter V, "Financial Reports".	January 3, 2012	September 13, 2016, [insert **Federal Register** citation].	These provisions are intended to apply to any person subject to Clean Air Act section 128, and are included in the SIP for the limited purpose of satisfying the requirements of Clean Air Act sections 110(a)(2)(E)(ii) and 128. January 3, 2012 is the Commonwealth approval date.
Act 416 (Commonwealth of Puerto Rico's "Environmental Public Policy Act"), Title II, "On the Environmental Board," Section 7, "Creating the Board; Members; Terms," sections A. and D.	September 22, 2004	September 13, 2016, [insert **Federal Register** citation].	These provisions are intended to apply to any person subject to Clean Air Act section 128, and are included in the SIP for the limited purpose of satisfying the requirements of Clean Air Act sections 110(a)(2)(E)(ii) and 128. September 22, 2004 is the Commonwealth approval date.

■ 4. Add § 52.2730 to read as follows:

§ 52.2730 Section 110(a)(2) infrastructure requirements.

(a) *1997 8-hour ozone and the 1997 $PM_{2.5}$ NAAQS*—(1) *Approval.* Submittal from Puerto Rico dated November 29, 2006 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 1997 ozone and the 1997 $PM_{2.5}$ NAAQS. This submittal satisfies the 1997 ozone and the 1997 $PM_{2.5}$ NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval.* Submittal from Puerto Rico dated November 29, 2006 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 1997 ozone and the 1997 $PM_{2.5}$ NAAQS are disapproved for the following sections: 110(a)(2)(C) (PSD program only), (D)(i)(II), PSD program only), (D)(ii) (PSD program only) and (J) (PSD program only). These requirements are being addressed by § 52.2729 which has been delegated to Puerto Rico to implement.

(b) *2008 ozone and the 2006 $PM_{2.5}$ NAAQS*—(1) *Approval.* Submittal from Puerto Rico dated January 22, 2013, supplemented February 1, 2016 to address the CAA infrastructure requirements for the 2008 ozone NAAQS and supplemented April 16, 2015 and February 1, 2016 to address the CAA infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS. This submittal satisfies the 2008 ozone and the 2006 $PM_{2.5}$ NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval.* Submittal from Puerto Rico dated January 22, 2013 and supplemented April 16, 2015 and February 1, 2016, to address the CAA infrastructure requirements for the 2008 ozone and the 2006 $PM_{2.5}$ NAAQS are disapproved for the following sections: 110(a)(2)(C) (PSD program only), (D)(i)(II) (PSD program only), (D)(ii) (PSD program only) and (J) (PSD program only). These requirements are being addressed by § 52.2729 which has been delegated to Puerto Rico to implement.

(c) *2008 lead NAAQS*—(1) *Approval.* Submittal from Puerto Rico dated January 31, 2013 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 2008 lead NAAQS. This submittal satisfies the 2008 lead NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(2) *Disapproval.* Submittal from Puerto Rico dated January 31, 2013 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 2008 lead NAAQS are disapproved for the following sections: 110(a)(2)(C) (PSD program only), (D)(i)(II) (PSD program only), (D)(ii) (PSD program only) and (J) (PSD program only). These requirements are being addressed by § 52.2729 which has been delegated to Puerto Rico to implement.

[FR Doc. 2016–21326 Filed 9–12–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 102

RIN 0906–AA84

Removing Outmoded Regulations Regarding the Smallpox Vaccine Injury Compensation Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Direct final rule.

SUMMARY: This action removes the outmoded regulations for the Smallpox Vaccine Injury Compensation Program. The program and its implementing regulation have been rendered obsolete by the expiration of the Declaration Regarding Administration of Smallpox Countermeasures under the Smallpox Emergency Personnel Protection Act of 2003 and incorporation of the smallpox countermeasure injury coverage under the Public Readiness and Emergency Preparedness Act of 2005 and its authorization of the Countermeasures Injury Compensation Program.

DATES: This action is effective November 14, 2016 without further action, unless adverse comment is received by October 13, 2016. If adverse comment is received, HHS will publish a timely withdrawal of the rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding the Smallpox Vaccine Injury Compensation Program should be directed to Narayan Nair, M.D., Acting Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857, by phone at (301) 443–5287, or by email at *nnair@hrsa.gov.*

SUPPLEMENTARY INFORMATION: In response to *Executive Order 13563,* Sec. 6(a), which urges agencies to "repeal" existing regulations that are "outmoded" from the Code of Federal Regulations (CFR), HHS is removing 42 CFR part 102. Notice and comment are not required for this rule, because it affects agency organization, procedure, or practice under 5 U.S.C. 553(b)(A). Furthermore, HHS believes that there is good cause hereby to bypass notice and comment and proceed to a direct final rule, pursuant to 5 U.S.C. 553 (b)(B). The action is non-controversial, as it merely removes a provision from the CFR that is obsolete. This rule poses no new substantive requirements on the public. Accordingly, HHS believes this direct final rule will not elicit any significant adverse comments, but if such comments are received HHS will publish a timely notice of withdrawal in the **Federal Register**.

I. Background

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), (42 U.S.C. 239 *et seq.*) enacted on April 30, 2003, authorized the Secretary of the Department of Health and Human Services (the Secretary), through the establishment of the Smallpox Vaccine Injury Compensation Program (SVICP), to provide benefits and/or compensation to certain persons who sustained covered injuries as a direct result of the administration of covered smallpox countermeasures (including the smallpox vaccine) or as a result of vaccinia contracted through accidental vaccinia contact. The SVICP's implementing regulation was codified at 42 CFR part 102.

The SVICP provided compensation for unreimbursed medical expenses and/or lost employment income to eligible individuals for covered injuries sustained as a direct result of the smallpox vaccine or accidental vaccinia inoculation, and/or death benefits to certain survivors of these individuals. The Secretary did not extend SEPPA's Declaration Regarding Administration of Smallpox Countermeasures, which expired on January 23, 2008. Vaccine recipients and accidental vaccinia contacts had 1 and 2 years, respectively, to file a request for program benefits. The SVICP ended on January 23, 2010.

Alternatively, based on a credible risk that the threat of exposure to variola virus, the causative agent of smallpox, constitutes a public health emergency, the Secretary issued a Declaration (73 FR 61869–61871) covering smallpox countermeasures under the Public Readiness and Emergency Preparedness Act of 2005 (PREP Act), with an effective date of January 24, 2008. The PREP Act authorizes the establishment and administration of the Countermeasures Injury Compensation Program, whose implementing regulation, at 42 CFR part 110, is based on the SVICP's regulation and provides similar benefits. On December 9, 2015, the PREP Act Declaration was amended and republished (80 FR 76546–76553), extending the effective time period to December 31, 2022, and deleting obsolete language referring to SEPPA.

Executive Order 12866

This action does not meet the criteria for a significant regulatory action as set out under Executive Order 12866, and review by the Office of Management and Budget has accordingly not been required.

Regulatory Flexibility Act

This action will not have a significant economic impact on a substantial number of small entities. Therefore, the regulatory flexibility analysis provided for under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

This action does not affect any information collections.

List of Subjects in 42 CFR Part 102

Biologics, Immunization, Public health, Smallpox.

PART 102—[REMOVED]

■ For reasons set out in the preamble, and under the authority at 5 U.S.C. 301, HHS amends 42 CFR chapter I by removing part 102.

Dated: August 26, 2016.

James Macrae,

Acting Administrator, Health Resources and Services Administration.

Approved: September 7, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–21888 Filed 9–12–16; 8:45 am]

BILLING CODE 4165–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WCB: WC Docket No. 12–375; FCC 16–102]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues its reform of the inmate calling services (ICS) marketplace by responding to points raised in a petition filed by Michael S. Hamden, seeking reconsideration of certain aspects of the Commission's *2015 ICS Order.* Specifically, the Commission amends its rate caps to better allow ICS providers to recover costs incurred as a result of providing inmate calling services, including the costs of reimbursing facilities for any costs they may incur that are reasonably and directly related to the provision of service. The Order also clarifies the definition of "mandatory taxes and fees" and addresses other arguments raised by Mr. Hamden.

DATES: The rules adopted in this document shall become effective December 12, 2016, except for the amendments to 47 CFR 64.6010(a) and (c), which shall become effective March 13, 2017.

FOR FURTHER INFORMATION CONTACT: Gil Strobel, Wireline Competition Bureau, Pricing Policy Division at (202) 418–1540 or at *Gil.Strobel@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Order on Reconsideration, released August 9, 2016. The full text of this document may be downloaded at the following internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-102A1.docx* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

I. Executive Summary

1. In this order, we respond to the petition filed by Michael S. Hamden and amend our rate caps to improve the ability of providers to cover costs facilities may incur that are reasonably related to the provision of ICS.

- The Commission is statutorily mandated to ensure ICS rates are just, fair, and reasonable and to promote access to ICS by inmates and their families and friends. In response to claims our prior decision not to include certain costs in our rate cap calculations threatens the further deployment of ICS, we are increasing the rate caps to reflect the costs facilities may incur that are reasonably related to the provision of ICS.

- Acting upon the current record, including Hamden Petition and other input received after the 2015 ICS Order, the Commission concludes that facilities may incur costs directly related to the provision of ICS. Providers and facilities claim the 2015 rate caps prevent them from recovering all of their reasonable costs. We now revise our rate caps to expressly account for the possibility of reasonable facility costs related to ICS.
- Our rate caps continue to reflect the difference in the per-minute costs between smaller facilities and their larger counterparts, thus ensuring providers are fairly compensated for their ICS costs.
- After reviewing the record and the Hamden Petition, we amend the definition of "Mandatory Tax or Mandatory Fee." The amended definition eliminates confusion and more clearly reflects the Commission's decision to prohibit providers from marking up mandatory taxes or fees that they pass through to consumers, unless the markup is specifically authorized by statute, rule, or regulation.
- Having considered the Hamden Petition and the record as a whole, we deny all other aspects of the Petition. Specifically, we are not persuaded to reconsider our decision to refrain from regulating site commissions. Nor are we persuaded, based on the current record, of the need to further clarify the Single-Call Rule adopted in the 2015 ICS Order.

II. Background

2. This Order is the latest in a proceeding that began in 2012, when the Commission issued a notice of proposed rulemaking 78 FR 4369, January 22, 2013 in response to long-standing petitions seeking relief from certain ICS rates and practices. The Hamden Petition seeks partial reconsideration of the 2015 ICS Order, in which we adopted comprehensive reforms to the ICS market, including tiered rate caps for both interstate and intrastate ICS calls, and limits on ancillary service charges. In the 2015 ICS Order, we focused on our core authority over ICS rates, adopting rate caps in fulfillment of our obligation to ensure that compensation for ICS calls is fair, just, and reasonable. We capped ICS rates at levels that we found would be just and reasonable and would ensure that providers are fairly compensated, as required by the Act. In setting the rate caps, we declined to include the cost of site commissions, which are payments from facilities to providers, because we found that such payments are not a legitimate cost of providing ICS. We did not, however, prohibit providers from paying site commissions. Instead, we let providers and facilities negotiate over whether providers would make site commission payments and, if so, what payments are appropriate. Our approach offered ICS providers and facilities the freedom to negotiate compensation that is fair to each, while also ensuring that ICS consumers are charged rates that are fair, just, and reasonable.

3. In addition to setting rate caps for interstate and intrastate ICS calls, we discussed what costs, if any, facilities incur that are reasonably attributable to ICS. Specifically, we considered whether we should expressly provide for recovery of such costs through an additive to the per-minute rate caps limiting the prices providers may charge inmates and their families. The record before us on this point was relatively limited. Moreover, the data we had was mixed regarding the costs, if any, facilities incur that are reasonably related to the provision of ICS. Some commenters argued that many of the activities that facilities claim as ICS-related costs are actually performed by ICS providers. Other commenters, however, asserted that correctional facilities incur a variety of costs related to ICS that providers do not. These costs included expenses related to "call monitoring, responding to ICS system alerts, responding to law enforcement requests for records/recordings, call recording analysis, enrolling inmates for voice biometrics, and other duties." As we noted, "[e]ven commenters asserting that facilities incur costs that are properly attributable to the provision of ICS do not agree on the extent of those costs." In the 2015 ICS Order, we declined to adopt a per-minute "additive," because of our view that the costs facilities claimed to incur in allowing ICS were "already built into our rate cap calculations and should not be recovered through an 'additive' to the ICS rates."

4. Following the release of the 2015 ICS Order, four ICS providers filed petitions for stay before the Commission, including Global Tel*Link Corporation (GTL), Securus Technologies, Inc. (Securus), Telmate, LLC (Telmate), and CenturyLink. GTL and Telmate, in particular, argued that the Commission was required to include the costs of paying site commissions in the rate caps and that it set the rate caps below the documented costs of many ICS providers. The Wright Petitioners opposed the petitions, stressing the importance of the "overwhelmingly positive public interest benefits from the adoption of the [2013 ICS Order]" and expressing concern that a stay of the 2015 ICS Order would delay relief to consumers and harm the public interest.

5. On January 22, 2016, the Wireline Competition Bureau (WCB or Bureau) issued an order denying the stay petitions of GTL, Securus, and Telmate. The Bureau found that the petitioners failed to demonstrate that they would suffer irreparable harm if the 2015 ICS Order was not stayed. The Bureau also was not persuaded that the petitioners were likely to succeed on the merits of their arguments or that a stay would be in the public interest. To the contrary, the Bureau noted that other parties—particularly ICS consumers—would likely be harmed if the relevant provisions of the 2015 ICS Order were stayed.

6. After the Bureau issued its order denying the stay petitions, the providers appealed the 2015 ICS Order to the D.C. Circuit. On March 7, 2016, the court stayed two provisions of the Commission's ICS rules: 47 CFR 64.6010 (setting caps on ICS calling rates that vary based on the size and type of facility being served) and 47 CFR 64.6020(b)(2) (setting caps on charges and fees for single-call services). The D.C. Circuit's March 7 Order denied motions for stay of the Commission's ICS rules "in all other respects." On March 23, 2016, the D.C. Circuit modified the stay imposed in the March 7 Order to provide that "47 CFR 64.6030 (imposing interim rate caps)" be stayed as applied to "intrastate calling services. Final briefs from the parties are due to the Court on October 5, 2016, and oral arguments have not yet been scheduled.

7. On January 19, 2016, Michael S. Hamden, an attorney who has both represented prisoners and served as a corrections consultant filed a Petition for Partial Reconsideration, seeking reconsideration of certain aspects of the 2015 ICS Order. Hamden asks the Commission to reconsider its decision not to prohibit providers from paying site commissions or, in the alternative, to mandate a "modest, per-minute facility cost recovery fee that would be added to the rate caps."[1] In short, Hamden, like several of the ICS providers, asserts that at least some portion of site commissions serves to reimburse facilities for reasonable costs

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[1] Although never clearly stated, the Petition appears to seek to limit any payments to facilities to the proposed "facility cost-recovery fee" that would be added to the per-minute rate caps.

that facilities incur in providing ICS, and that excluding site commissions entirely from our rate cap calculations results in rates that are too low to allow providers to pay facilities for their reasonable ICS-related costs and still earn a profit. Hamden also asks the Commission to clarify "the meaning of the terms 'mandatory fee,' 'mandatory tax,' and 'authorized fee' as they are used in the [2015 ICS Order]." Finally, Hamden seeks clarification that ICS providers "cannot circumvent the Second ICS Order's rule regarding charges for single-call services through the use of unregulated subsidiaries to serve as the companies that charge third-party transaction fees for such services." On February 11, 2016, the Commission's Consumer and Government Affairs Bureau (CGB) issued a Public Notice seeking comment on the Hamden Petition. Multiple parties submitted responses and oppositions to the Hamden Petition, including ICS providers, facilities, and the Wright Petitioners. Hamden also submitted a reply to the responses and oppositions on April 4, 2016. We now act on these filings.

III. Discussion

8. After reviewing the Hamden Petition, the arguments made in response to the Petition, and other relevant evidence in the record, we find that: (1) At least some facilities likely incur costs that are directly and reasonably related to the provision of ICS, (2) it is reasonable for those facilities to expect providers to compensate them for those costs, (3) such costs are a legitimate cost of ICS that should be accounted for in our rate cap calculations, and (4) our existing rate caps do not separately account for such costs. Accordingly, out of an abundance of caution, we increase our rate caps to better ensure that ICS providers are able to receive fair compensation for their services, including the costs they may incur in reimbursing facilities for expenses reasonably and directly related to the provision of ICS. Specifically, we increase our rate caps for debit and prepaid ICS calls to $0.31 per minute for jails with an average daily population (ADP) below 350, $0.21 per minute for jails with an ADP between 350 and 999, $0.19 per minute for jails with an ADP of 1,000 or more, and $0.13 per minute for prisons. As discussed below, we also increase the rate caps for collect calls by a commensurate amount.

9. We find that our revised rate caps will allow inmate calling providers to recover their costs of providing ICS even while reimbursing facilities for any costs they may incur that are reasonably and directly related to the provision of ICS.[2] We also find that these rate caps will adequately ensure that rates for ICS consumers will be fair, just, and reasonable. Thus, we grant the Hamden Petition to the extent that it seeks an increase in the ICS rate caps to expressly account for reasonable facility costs.[3] We also grant the Hamden Petition to the extent that it seeks a clarification of the definitions of the terms "Mandatory Taxes" and "Mandatory Fees." We deny the Hamden Petition in all other respects.

A. The Rate Caps Should Account for Costs Reasonably and Directly Related to the Provision of ICS

10. The Commission has a statutory duty to set rates that are fair, just, and reasonable and to promote access to ICS by inmates and their families and friends. Accordingly, one of our goals is to ensure that inmates and their families have as much access as possible to this vital communications service. Some parties in the reconsideration proceeding have asserted that our prior decision not to include certain costs in our rate cap calculations could pose a risk to the continued deployment and development of ICS. Our reforms would not achieve their purpose if they resulted in less robust services for inmates and those who wish to communicate with them. As a result, out of an abundance of caution, we are increasing the rate caps to better reflect the costs that facilities claim to incur that are directly and reasonably related to the provision of ICS. This action better enables the Commission to achieve its twin statutory mandates of promoting deployment of ICS and ensuring that ICS rates are fair to both providers and consumers.

11. As the Commission has repeatedly explained, providers should be able to recover costs that are "reasonably and directly related to the provision of ICS" through the ICS rates. The Commission has also recognized that correctional facilities may incur costs that are reasonably related to the provision of ICS. With both the Mandatory Data Collection and the 2014 ICS FNPRM, the Commission took steps to determine the costs involved in providing ICS. For example, in the Mandatory Data Collection, the Commission required ICS providers to submit their costs related to the provision of ICS, including costs related to telecommunications, equipment, and security. In addition, in the 2014 ICS FNPRM, the Commission sought comment on the "actual costs" that facilities may incur in the provision of ICS and the appropriate vehicle for enabling facilities to recover such costs. The Commission also sought comment on whether any such costs should be recoverable though the per-minute rates ICS providers charge inmates and their families.

12. After considering a "wide range of conflicting views" regarding facilities' costs, we acknowledged, in the 2015 ICS Order, the possibility that facilities incur some costs to provide ICS. We concluded, however, that the record at that time "indicate[d] that if facilities incurred any legitimate costs in connection with ICS, those costs would likely amount to no more than one or two cents per billable minute." We further concluded that the rate caps we adopted were "sufficiently generous to cover any such costs." Accordingly, we declined to adopt any of the proposals seeking an "additive" to our rate caps to cover facilities' costs.

B. The Hamden Petition and Underlying Record Demonstrate That the Existing Rate Caps May Not Adequately Account for Facility Costs

13. With the benefit of the record developed since the 2015 ICS Order, we now conclude that at least some facilities likely incur costs directly related to the provision of ICS and that those costs may in some instances amount to materially more than one or two cents a minute.[4] Providers and

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[2] As explained below, because we do not regulate site commissions in this order (and have not done so previously), any revenues derived under these rate caps may be passed through to facilities.

[3] As noted above, Hamden appears to favor an approach whereby the Commission would adopt an "additive" to our existing rate caps and prohibit providers from paying any site commissions beyond the additive. We maintain our view that prohibiting site commission payments is not necessary at this time. As we noted in the 2015 ICS Order, "this approach is consistent with the Commission's general preference to rely on market forces, rather than regulatory intervention, wherever reasonably possible." Correctional authorities have every incentive to accept whatever commissions providers can pay within the rate caps given the benefits ICS confers on both facilities and inmates. In addition, we note that our approach obviates the need to address arguments challenging our authority to regulate site commission payments. Contrary to the suggestion in one dissent, although we have not elected to adopt the precise mechanism that Hamden appears to have advocated for "offset[ting]" the facilities' claimed costs of providing access to ICS, our approach to ensuring that our rate caps adequately account for facilities' reasonable ICS-related costs is, at a minimum, a logical outgrowth of the Hamden Petition.

[4] We continue to hold that site commission payments should not be considered in determining fair or reasonable rates, except to the extent those payments reflect costs facilities incur that are directly related to the provision of ICS. As we explained in the 2015 ICS Order, "[p]assing the non-ICS-related costs that comprise site

facilities have claimed that the current rate caps prevent them from recovering all of their reasonable costs. Similarly, some parties have argued that our 2015 rate caps may not have been "generous" or conservative enough to cover all of the ICS-related costs that we expected providers to incur.

14. The Hamden Petition asks the Commission, among other things, to reconsider its decision not to "mandate a modest, per-minute facility cost-recovery fee that would be added to the rate caps." Notwithstanding the debate regarding the nature and extent of the costs that correctional facilities incur, the Petition asserts that "it seems clear that facilities do incur some administrative and security costs that would not exist but for ICS." Hamden notes that the idea of a cost recovery mechanism has gained support from a broad range of parties, including "ICS providers, law enforcement, a state regulator, and some in the inmate advocacy community." Finally, Hamden concludes that "[t]he lack of perfectly accurate data . . . does not preclude a rational cost recovery mechanism and a legally sustainable Order." As Hamden notes, "[e]ven in the absence of absolute certainty regarding . . . facility administrative costs, the Commission can make a rational decision" based on the record before us.

15. In response to the Hamden Petition, we received comments from numerous parties agreeing that the existing rate caps do not adequately account for ICS costs that facilities may incur. While not all of the commenters agree with Hamden's preferred approach, many of the comments submitted assert that facilities incur costs greater than those we allowed for under our 2015 rate caps. For example, NSA states that "[i]n many cases, the duties performed by Sheriffs and jails are the same or similar in nature as the security features and duties found by the Commission as recoverable cost, including monitoring calls, determining numbers to be blocked and unblocked, enrolling inmates in voice biometrics service and maintenance and repair of ICS equipment." NSA acknowledges that providers perform security and administrative tasks "in some cases," but asserts that in many other cases, those tasks fall to Sheriffs and jails, not providers. This view is supported by Pay Tel, which has asserted that "jails, not ICS providers, perform the lion's share of administrative tasks associated with the provision of ICS and, more importantly . . . handle ALL of the monitoring of inmate calls."

16. NSA's arguments echo claims other parties have made in their filings before the D.C. Circuit. For example, representatives of state and local governments cite "evidence that jails and prisons incur real and substantial costs in allowing access to ICS." More specifically, they contend that correctional facilities can spend "over $100,000 a month to provide ICS privileges to inmates, most of which goes into the labor hours required to facilitate and monitor inmates' use of ICS." Similarly, Telmate has argued that our 2015 rate caps are not "sufficiently generous" to cover the "costs that facilities bear in providing ICS."

17. These arguments are consistent with earlier filings claiming that facilities may incur costs related to the provision of ICS that are "non-trivial." Out of an abundance of caution, we now revise our rate caps to incorporate those costs more fully.

C. We Increase Our Rate Caps To Better Reflect Evidence in the Record

18. In view of the further evidence and arguments we have received, we now reconsider our earlier rate caps insofar as they did not separately account for ICS costs that facilities may incur.[5] Accordingly, we increase our rate caps to better reflect the costs that facilities incur that are reasonably related to the provision of ICS. In addition, consistent with our findings in the 2015 ICS Order and with the evidence in the record, we recognize that the per-minute costs associated with ICS are higher in smaller facilities than in larger ones. Thus, we increase our rate caps more for smaller facilities than for larger ones.[6] Specifically, we rely on the analyses submitted by NSA and by Baker/Wood to increase our rate caps by $0.02 per minute for prisons, by $0.05 per minute for larger jails, and by $0.09 per minute for the smallest jails.[7] In adopting these revisions to our rate caps, we once again rely on our core ratemaking authority.[8]

19. As noted above, in the 2015 ICS Order, we agreed with parties that argued that facilities' reasonable ICS-related costs likely amounted to no more than one or two cents per minute and did not require an adjustment to our rate caps. Upon further consideration, and with the benefit of an expanded record, we now conclude that we should increase our rate caps in light of claims that that some facilities may incur more significant costs that are reasonably related to the provision of ICS. After reviewing the Hamden Petition, and the record developed in response to the Petition, we find that facilities—particularly smaller facilities—may face costs that are considerably higher than one or two cents per minute. Out of an abundance of caution, we increase our rate caps to account for this possibility and to better ensure that providers are fairly compensated for their reasonable ICS costs—including costs they may incur in reimbursing facilities for expenditures that are reasonably related to the provision of ICS—and that providers and facilities have stronger incentives to promote increased deployment of, and access to, ICS.[9]

20. The rate caps we adopted in the 2015 ICS Order were based on 2012 and 2013 data that providers submitted in response to the Mandatory Data Collection. While we still find that the cost data from Mandatory Data Collection are an appropriate basis for constructing rate caps, we also recognize that due to our jurisdictional limitations, the Mandatory Data Collection only included cost information from *providers,* and not from *facilities.* Providers reported their own costs, but were not obligated to submit information about costs incurred by facilities. Indeed, there is no reason to believe that providers necessarily had access to the information needed to determine facility costs. As a result, the information on facilities' ICS-related

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commission payments . . . onto inmates and their families as part of the costs used to set rate caps would result in rates that exceed the fair compensation required by section 276 and that are not just and reasonable, as required by section 201."

[5] We do not, however, revisit the rate structure or overall methodology used in the *2015 ICS Order.* Specifically, we reject Telmate's argument that our rate caps "are based on a flawed methodology, and thus cannot be saved by the proposed rate increase[s]." This argument addresses the fundamental structure of our rate caps and methodology and goes to the heart of our 2015 ICS Order. As such, the argument appears to be an untimely—and improperly presented—request for reconsideration of that order.

[6] Consistent with our conclusion in the 2015 ICS Order, we find that providers will need more time to transition all of the country's jails to the new rate caps than to transition prisons. Accordingly, we adopt a six-month transition period for jails, in order to "give providers and jails enough time to negotiate (or renegotiate) contracts to the extent necessary to comply" with our new rules.

[7] As explained below, Baker/Wood and NSA provided the most credible data regarding facilities' costs and we find that a hybrid of those two proposals yields the most reliable basis for determining how much we must increase our rate caps to ensure that providers can compensate facilities for the costs the facilities incur that are reasonably related to the provision of ICS. The rate increases we adopt today are also supported by the Pay Tel Proposal.

[8] Accordingly, and for the reasons described below, we do not prohibit or regulate site commission payments.

[9] Several parties have warned that access to ICS may be reduced if our rate caps fail to account for facilities' reasonable ICS-related costs.

costs before the Commission came from filings received in response to the 2014 ICS FNPRM.[10] Unlike the responses to the Mandatory Data Collection, however, which required providers to quantify various costs incurred in providing ICS, facilities' responses to the questions in the 2014 ICS FNPRM about facility costs were purely voluntary and consisted mostly of more general, narrative descriptions. The paucity of quantitative data made facility costs more difficult to measure than providers' costs, a problem exacerbated by disputes in the record regarding which of the costs involved in providing ICS could reasonably be attributed to providers, and which could reasonably be attributed to facilities. This led us to discount claims that facilities faced costs that should be recovered through the ICS rates.

21. Given these limitations, we relied almost completely on submissions from providers and their representatives to arrive at an estimate of facilities ICS-related costs in the 2015 ICS Order. In contrast, the approach we adopt today relies largely on proposals submitted by parties representing a much more diverse range of interests. The Baker/Wood Proposal, for example, was submitted by Darrell Baker, the Director of the Utility Services Division of the Alabama Public Service Commission, and Don Wood, an economic consultant for Pay Tel Communications who also has done work for other ICS providers. And the NSA proposal is based on data the NSA collected from individual sheriffs regarding the costs they incur to provide security and perform administrative functions necessary to allow ICS in jails, including the salaries and the benefits for the officers and employees performing ICS-related duties. We find these two proposals provide a sounder basis for determining facilities' ICS-related costs than did the provider-generated proposals we relied on in 2015.[11]

22. The rate caps we adopt today are based on a hybrid of the Baker/Wood and NSA Proposals. The Baker/Wood proposal is premised on Baker's view that "some form of facility cost recovery is critical," and is supported by Baker's and Wood's independent reviews of cost support data. The NSA Proposal is based on the NSA's cost survey, which gathered information on the costs to sheriffs of providing security and administrative functions necessary to allow ICS in jails, including the salaries and the benefits for the officers and employees performing the ICS-related duties. Both of these proposals merit significant consideration, particularly given that they arrive at similar conclusions: Baker and Wood recommend adopting a cost recovery mechanism of $0.07 per minute for jails with ADP less than 349, $0.05 for jails with ADP between 350 and 999, $0.05 for jails with ADP between 1000 and 2500 ADP, and $0.03 for prisons; NSA, for its part, supports the adoption of a cost recovery mechanism in the range of $0.09 to $0.11 per minute for facilities with ADP less than 349, $0.05 to $0.08 for facilities with 350 to 2499 ADP, $0.01 to $0.02 per minute for jails with ADP greater than 2500, and $0.01 to $0.02 per minute for prisons. Not only are the two proposals fairly consistent with each other, they are notably closer to each other than they are to most other proposals in the record, including those that we relied on in the 2015 ICS Order.

23. Even given the similarities between the NSA and Baker/Wood Proposals, we acknowledge that the record on what the costs facilities actually incur in relation to ICS is still imperfect. Nonetheless, we find that the record is sufficient to warrant an increase in the rate caps. As state and local governments have explained in their court filings, even faced with "less-than-ideal data," it is the Commission's obligation to "determine as best it can ICS-related facility costs." Thus, based on the information in the record, including, in large part, the recommendations submitted by NSA and by Baker/Wood, we increase the rate caps by $0.02 for prisons, and $0.09, $0.05, and $0.05, respectively, for small, medium, and large jails. This translates into revised debit/prepaid rate caps of $0.13 per minute for prisons, $0.19 per minute for jails with an ADP greater than 1000, $0.21 for jails with ADP between 350 and 999, and $0.31 per minute for jails with ADP below 350. It also leads to revised collect rate caps of $0.16 per minute for prisons, $0.54 per minute for jails with ADP greater than 1000, $0.54 per minute for jails with ADP between 350 and 999, and $0.58 per minute for jails with ADP less than 350.[12] To arrive at these numbers, we compared the Baker/Wood and NSA proposals and, in order to produce a conservative rate, took the higher additive rate of the two proposals.[13] In the instance where even the low end of NSA's proposed rate range was greater than the rate proposed by Baker and Wood, we selected the lower end of the NSA rate range to better account for the suggestions of both proposals.[14]

24. The approach we use to increase the rates to the levels we adopt today has the primary advantage of being supported by two separate and independent sets of data. It has the additional advantage of being supported by credible, independent participants in this proceeding, including Baker, an objective public service employee who has participated in this proceeding and has been working on inmate calling reform at the state level,[15] and Wood, an

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[10] Providers did submit information about total site commission payments made to facilities, but, as noted above, we did not take those payments into account in setting our rate caps. Indeed, we still find that the bulk of site commission payments should not be considered in calculating the rate caps because most of the money providers pay to facilities is not directly related to the provision of ICS. We also note that it is likely that the costs submitted by providers include other costs that are not reasonably related to the provision of ICS. In our decision today, however, we conclude that the costs that facilities incur that are reasonably related to the provision of ICS may be more than *de minimis* and we therefore increase our rate caps to better accommodate those costs.

[11] We have also taken account of arguments that correctional authorities and ICS providers have raised to the D.C. Circuit concerning our decision in the 2015 Order not to separately account for potential facility costs when calculating the rate caps.

[12] As we did in the 2015 ICS Order, we adopt a separate rate cap tier for collect calling, as well as a two-year step-down transitional period that will decrease the collect rates over time and, by 2018, will bring the collect rates down to the debit/prepaid rates we adopt today. This is consistent with the Commission's prior actions in adopting a separate collect calling rate tier based on data indicating that collect calls were more expensive than other types of ICS calls and on the Commission's decision to encourage correctional institutions to move away from collect calling.

[13] Our decision on reconsideration rests on a desire to take a cautious approach that minimizes any concerns that our rate caps fail to allow for fair, just, and reasonable compensation. Indeed, the very decision to reconsider our earlier order is prompted by our view that it is better to err on the side of caution than to risk undercompensating providers and facilities for their reasonable costs that are directly related to ICS. Consistent with this approach, when the NSA and Baker/Wood Proposals differed, we opted for the choice that resulted in the higher rate cap. This decision is informed, in part, by the fact that NSA's proposal already reflects an effort to reduce rates below the levels that the raw data might support, absent any analysis or refinement. As explained above, however, our rate caps provide a ceiling, and we expect that in many instances providers will charge rates far below the maximums permitted under our rate caps.

[14] NSA proposed a rate increase of $0.09–$0.11 per minute for the smallest jails, while Baker/Wood proposed adding only $0.07 per minute for those facilities. Given that the low end of NSA's proposed rate range was higher than the rate proposed by Baker/Wood, we took the lowest number proposed by NSA (*i.e.,* $0.09/minute).

[15] In the Baker/Wood Proposal, Baker and Wood state that Baker's "experience with ICS in Alabama informs his view that some form of facility cost recovery is critical. He explained that the APSC regularly inspects ICS at jails and prisons in Alabama and is therefore very familiar with the activities and responsibilities that facility personnel undertake in administering ICS and in monitoring inmate calls. He concludes that facilities incur costs associated with ICS and should be provided an opportunity to recover their costs."

outside economic consultant to Pay Tel whom seven ICS providers engaged to prepare a joint report that was filed with the Commission. Our approach is also based on data provided by the NSA, which, as an organization representing sheriffs, is well situated to understand and estimate the costs that facilities face to provide ICS.[16]

25. Given that we find NSA's cost data to be credible we disagree with commenters who suggest the contrary. Andrew Lipman, in particular, denigrated NSA's cost survey for including only three months of data from only about five percent of NSA's members.[17] NSA convincingly defends its cost survey in its Opposition to the Hamden Petition, however, arguing that "[t]he Commission fails to explain . . . why these criticisms doom the NSA cost survey data even though they all equally apply to the cost recovery data and analysis performed by GTL's cost consultant, which the Commission apparently accepts." NSA also argues that the Commission "fails to explain why it entirely ignores the data provided by other parties that show a much higher facility compensation fee than one or two cents per minute." We agree with NSA's arguments and find that NSA's cost survey is a credible (though imperfect) source of data regarding the costs facilities incur in relation to ICS. We are particularly persuaded by NSA's point that the criticisms of the NSA cost survey made by Andrew Lipman, and recited in the 2015 ICS Order, apply with equal force to other proposals, including the analysis performed by GTL's cost consultant that supported the one to two cent estimate that informed our decision in the 2015 ICS Order. Moreover, we note that Pay Tel, which has no affiliation with NSA, has rebutted many of the arguments raised by Lipman and concluded that NSA's survey results constitute a "robust and significant data set."

26. We are confident that the new rate caps we adopt today will ensure that inmates and their families have access to ICS at rates that are fair to consumers, providers, and facilities.[18] By adjusting the rate caps to better account for the reasonable costs that facilities may incur in connection with ICS, we ensure that providers will be able to charge rates that cover all of their costs that are reasonably related to the provision of ICS.[19] Based on our analysis of the data providers submitted to the Mandatory Data Collection, the new rates should allow virtually all providers to recover their overall costs of providing ICS.[20] To come to this conclusion, we calculated each provider's cost per minute, by tier, based on their reported numbers. We then compared each provider's cost per minute to our new rates for each tier. The difference between these two amounts allowed us to calculate the net impact that each provider will face as a result of our new rate caps. Our analysis indicates that the new rate caps will allow all but one provider to recover its costs, on average.[21] Although we conclude that virtually all providers will be able to recover their legitimate ICS costs (including a reasonable return on capital) under the new rate caps, we reiterate that our waiver process remains available to any providers that find that the rate caps do not result in fair compensation for their services.[22]

D. We Amend the Definition of "Mandatory Tax or Mandatory Fee"

27. In the 2015 ICS Order, we defined a Mandatory Tax or Mandatory Fee as "a fee that a Provider is required to collect directly from Consumers, and remit to federal, state, or local governments." In his Petition, Hamden asks us to clarify these definitions. After considering the Hamden Petition, the record developed in response to that petition, and the text of the 2015 ICS Order, we now amend the definition of Mandatory Tax or Mandatory Fee to read: "A fee that a Provider is required to collect directly from consumers, and remit to federal, state, or local governments. A Mandatory Tax or Fee that is passed through to a Consumer may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation." The amended definition more clearly captures the Commission's decision to allow carriers to collect applicable pass-through taxes, but to prohibit markups, other than those specifically authorized by law.[23]

28. In his petition, Hamden claims that there has been "confusion" regarding the Commission's definitions of the terms "authorized fee," "mandatory tax," and mandatory fee" in the 2015 ICS Order, and regarding "what fees and taxes the Commission intended to include as permissible under those terms." Although some commenters assert that the terms "Mandatory Tax" and "Mandatory Fee" were adequately defined by the 2015 ICS Order, other parties are open to further clarification from the Commission. The Wright Petitioners, for example, assert that "Mr. Hamden's comments regarding the clarification of the rules associated with the definition of 'Authorized Fee,' 'Mandatory Tax,' and 'Mandatory Fee' do merit further consideration."

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[16] While agreeing with our assessment that NSA is well-equipped to gauge facilities' costs, one dissenting commissioner nonetheless faults us for relying (in part) on NSA's estimates of those costs. In claiming that "the rate increases set forth in this *Order* are insufficient to cover the facility-administration costs" that jails incur in providing access to ICS, this commissioner relies on raw data from the NSA survey that NSA itself reasonably elected to discount when estimating jails' actual costs. NSA treated its survey data as "inputs" that, once "compared to and tested by" information elsewhere in the record, could be refined to generate more reliable estimated ranges of facilities' reasonable costs of providing access to ICS. Those ranges are the cost data we find credible—particularly given that, as noted above, the NSA and Baker/Wood Proposals arrive at similar conclusions. Thus, contrary to the dissent's contention that our rate caps, as revised in this Order, are "confiscatory," we are confident that they fall well within the zone of reasonableness.

[17] We note as well that Lipman did not identify his client, except as "certain clients with an interest in the regulation of inmate calling services," when filing prior to the 2015 ICS Order. Lipman has subsequently acted as counsel to Securus.

[18] In sum, we agree with Hamden that reconsideration of our rates will "pave the way for the comprehensive reform that the Commission has promised, that ICS consumers deserve, and that the ICS industry needs, while also ensuring that facilities will continue to facilitate ICS and that providers will earn a reasonable return on their investments."

[19] Indeed, although recognizing that the revised rate caps will "ensure that ICS consumers avoid paying unjust, unreasonable and unfair ICS rates," the Wright Petitioners assert that our revised rate caps are so conservative as to be "well above" providers' costs.

[20] Based on Commission analysis, this is true for nearly 100 percent of the ICS market, and all of the largest ICS providers. As noted above, there is only one small provider that might not be able to cover all of its ICS-related costs under the new rate caps.

[21] Our analysis of the data indicates that some providers may lose money on collect calls, but more than make up for any lost revenue with profits from debit and prepaid calls. In the 2015 ICS Order, we recognized that collect calling represents a small and declining percentage of inmate calls. The record further suggests that collect calls will continue to decline to a negligible share of ICS calls. In light of that, we are not concerned about losses that are recovered and that we predict will continue to decrease in the future. Providers will be able to recover their costs as a whole under our rate caps. Moreover, as noted above, we continue to be concerned that allowing the rate caps for collect calls to remain higher than the caps for other ICS calls on an ongoing basis would create incentives for providers to drive consumers to make collect calls. Such a result would drive up the costs of ICS for the average consumer and, therefore, would not be in the public interest.

[22] We also reiterate that "[i]f any provider believes it is being denied fair compensation . . . due, for example, to the interaction of our rate caps with the terms of the provider's existing service contracts—it may . . . seek preemption of the requirement to pay a site commission, to the extent that it believes that such a requirement is a state requirement and is inconsistent with the Commission's regulations."

[23] This rule allows providers to collect Universal Service fees, and similar government taxes and fees, from consumers and remit the funds to the relevant government entity, in keeping with existing federal and state requirements. As the 2015 ICS Order makes clear, we distinguish between such taxes and fees and site commission payments.

29. After further review, we agree with Hamden that we should clarify the definition of Mandatory Tax and Mandatory Fee. While the definitions of these terms were clear from the text of 2015 ICS Order, we take this opportunity to amend our rules to more clearly track the language and intent of the 2015 ICS Order. The prohibition against markups that we adopted in the 2015 ICS Order is an important part of our efforts to ensure that the rates and fees end users pay for ICS are fair, just, and reasonable. Thus, we now amend 47 CFR 64.6000 to read: "Mandatory Tax or Mandatory Fee means a fee that a Provider is required to collect directly from Consumers, and remit to federal, state, or local governments. *A Mandatory Tax or Fee that is passed through to a Consumer may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.*"

E. We Deny All Other Aspects of the Hamden Petition

30. As previously noted, the Hamden Petition asks the Commission to reconsider or clarify two additional aspects of the 2015 ICS Order. First, Hamden urges the Commission to reconsider its treatment of site commissions.[24] Second, Hamden asks that the Commission clarify that ICS providers cannot use unregulated subsidiaries to circumvent the rule regarding charges for single call services. After considering Hamden's arguments, as well as the rest of the record, we deny both requests.

1. There Is No Need To Regulate Site Commissions at This Time

31. In the 2015 ICS Order, we affirmed the Commission's previous finding that "site commissions do not constitute a legitimate cost to the providers of providing ICS" and, accordingly, did not include site commission payments in the cost data we used in setting our rate caps. Furthermore, although we encouraged states and correctional facilities to curtail or prohibit such payments, we concluded that "we do not need to prohibit site commissions in order to ensure that interstate rates for ICS are fair, just, and reasonable and that intrastate rates are fair."

32. Hamden now seeks reconsideration of this conclusion, arguing that the Commission should "prohibit payments to facilities in all forms." In the absence of such a ban, Hamden argues, "facilities will continue to demand, and ICS providers will continue to pay site commissions . . . ." Hamden also expresses concern that if providers are unwilling or unable to pay site commissions, ICS services "may be curtailed, especially in smaller, less profitable facilities."

33. Several commenters oppose Hamden's request. ICSolutions, for example, asserts that we lack the legal authority to regulate site commissions.[25] NCIC contends that prohibiting or capping site commissions will result in facilities being unable to recover their ICS-related costs, which, in turn, will lead to a reduction in inmate access. Finally, the Wright Petitioners argue that, even if the Commission were to ban site commissions, it is likely that providers and correctional facilities would simply "seek new and innovative ways to funnel additional funds in connection with entering into their exclusive contracts."

34. After reviewing the Hamden Petition and the subsequent record, we are not persuaded to reconsider our decision to refrain from regulating site commissions. We are not convinced, based on the current record, that regulation of site commissions is necessary or in the public interest. As we noted in the 2015 ICS Order, the "decision to establish fair and reasonable rate caps for ICS and leave providers to decide whether to pay site commissions—and if so, how much to pay—is supported by a broad cross-section of commenters . . . underscor[ing] the reasonableness of our approach." Based on the record on reconsideration, as well as the record in the underlying proceeding, we find that the prudent course remains to "focus on our core ratemaking authority in reforming ICS and not prohibit or specifically regulate site commission payments."[26]

2. There Is No Need To Further Clarify the Single-Call Rule Adopted in the 2015 ICS Order

35. In the 2015 ICS Order, we held that "for fees for single-call and related services and third-party financial transaction fees, we allow providers to pass through only the charges they incur without any additional markup." Hamden asserts that the Commission should clarify that the rule adopted in the 2015 ICS Order that single-call service costs must be passed through to end users with no additional markup may not be circumvented by providers using unregulated subsidiaries imposing "excessive financial transaction fees."

36. Most commenters disagree with Hamden's requested clarifications. Several commenters assert that the rule regarding charges for single call services is adequately defined in the 2015 ICS Order, and as a result, no clarification is needed.

37. Having reviewed the arguments on both sides of the matter, we agree with the majority of commenters that there is no need to clarify the rule regarding single-call service costs. We are not persuaded, based on the current record, that the clarifications Hamden seeks are either necessary or in the public interest. Additionally, we reiterate our finding from the 2015 ICS Order that "a major problem with single-call and related services is that customers are often unaware that other payment options are available, such as setting up an account . . . . We encourage providers to make clear to consumers that they have other payment options available to them." We find that no further action is necessary at this time, particularly given that we already have sought further comment on third-party financial transactions and potential fee-sharing.

IV. Procedural Matters

A. Paperwork Reduction Act

38. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002,

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[24] As noted above, Hamden asks that the Commission consider adopting an additive to the ICS rate caps as an alternative to banning all payments to facilities. We address that alternative at length in the discussion above and increase our 2015 rate caps to better accommodate facilities' ICS-related costs. We find no other changes to our rate caps are warranted. Nor do we find any need to regulate site commissions at this time.

[25] As was the case in the 2015 ICS Order, we need not reach these arguments, given our decision to let facilities and providers negotiate a reasonable approach to facility costs, subject only to providers' obligations to adhere to our rate caps. In addition, as discussed above, we have raised the rate caps to a level that should ensure that providers are able to earn a reasonable profit even after compensating facilities for any costs they incur that are reasonably related to the provision of ICS. This should help ensure that facilities recover the costs they incur that are directly related to the provision of ICS.

[26] Our commitment to maintain our approach to site commission payments is further bolstered by our decision today to increase the rate caps to ensure that providers are able to compensate facilities for the reasonable costs they incur that are directly related to the provision of ICS. Our decision to increase our rate caps to better account for facilities' costs does not require us to cap or limit site commission payments. In other words, nothing in our rules, as revised by this Order, restricts a provider's ability to distribute as it chooses whatever revenue it collects under the adopted rate caps.

Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

39. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this order. The FRFA is set forth in Appendix C of the Order.

V. Ordering Clauses

41. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 201(b), 215, 218, 220, 276, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 215, 218, 220, 276, 303(r), and 403, 405 and sections 1.1, 1.3. 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.427, and 1.429, the Petition for Reconsideration filed by Michael S. Hamden on January 19, 2016, IS GRANTED IN PART, and is otherwise DENIED, as described above.

42. *It is further ordered* that part 64 of the Commission's Rules, 47 CFR part 64, is AMENDED as set forth in Appendix A of the Order. These rules shall become effective December 12, 2016, except for the amendments to 47 CFR 64.6010(a) and (c), which shall become effective March 13, 2017.

43. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 276, 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, unless otherwise noted.

Subpart FF—Inmate Calling Services

■ 2. Revise § 64.6000 paragraph (n) to read as follows:

§ 64.6000 Definitions.

* * * * *

(n) *Mandatory Tax or Mandatory Fee* means a fee that a Provider is required to collect directly from consumers, and remit to federal, state, or local governments. A Mandatory Tax or Fee that is passed through to a Consumer may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation;

* * * * *

■ 3. Effective December 12, 2016, amend § 64.6010 by revising paragraphs (b) and (d) through (f) to read as follows:

§ 64.6010 Inmate Calling Services rate caps.

* * * * *

(b) No Provider shall charge, in any Prison it serves, a per-minute rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of:

(1) $0.13;

(2) [Reserved]

* * * * *

(d) No Provider shall charge, in the Prisons it serves, a per-minute rate for Collect Calling in excess of:

(1) $0.16 after the December 12, 2016;

(2) $0.15 after July 1, 2017; and

(3) $0.13 after July 1, 2018, and going forward.

(e) For purposes of this section, the initial ADP shall be calculated, for all of the Correctional Facilities covered by an Inmate Calling Services contract, by summing the total number of inmates from January 1, 2015, through the effective date of the Order, divided by the number of days in that time period;

(f) In subsequent years, for all of the correctional facilities covered by an Inmate Calling Services contract, the ADP will be the sum of the total number of inmates from January 1st through December 31st divided by the number of days in the year and will become effective on January 31st of the following year.

4. Effective March 13, 2017, revise § 64.6010(a) and (c) to read as follows:

§ 64.6010 Inmate Calling Services rate caps.

(a) No Provider shall charge, in the Jails it serves, a per-minute rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of:

(1) $0.31 in Jails with an ADP of 0–349;

(2) $0.21 in Jails with an ADP of 350–999; or

(3) $0.19 in Jails with an ADP of 1,000 or greater.

* * * * *

(c) No Provider shall charge, in the Jails it serves, a per-minute rate for Collect Calling in excess of:

Size and type of facility	Collect rate cap per MOU as of effective date	Collect rate cap per MOU as of July 1, 2017	Collect rate cap per MOU as of July 1, 2018
0–349 Jail ADP	$0.58	$0.45	$0.31
350–999 Jail ADP	0.54	0.38	0.21
1,000+ Jail ADP	0.54	0.37	0.19

* * * * *

[FR Doc. 2016–21637 Filed 9–12–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0129; 4500030113]

RIN 1018–BA93

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Platanthera integrilabia (White Fringeless Orchid)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for *Platanthera integrilabia* (white fringeless orchid), a plant species from Alabama, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee. This rule adds this species to the Federal List of Endangered and Threatened Plants.

DATES: This rule is effective October 13, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/cookeville.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone: 931–528–6481; facsimile: 931–528–7075.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **ADDRESSES**, above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Please refer to the proposed listing rule for the white fringeless orchid (80 FR 55304; September 15, 2015) for a detailed description of previous Federal actions concerning this species.

Background

Below, we update and summarize information from the proposed listing rule for the white fringeless orchid (80 FR 55304; September 15, 2015) on the historical and current distribution of white fringeless orchid. Please refer to the proposed listing rule for a summary of other species information, including habitat, biology, and genetics.

Distribution

In this final rule, we are updating information on the species' distribution from the September 15, 2015, proposed rule to include two minor changes, which were brought to our attention following publication of the proposed listing rule. First, we are changing the 2014 status of the Forsyth County, Georgia, population from extant to uncertain (Table 1), because flowering plants have not been documented at this site since 1990 (Richards 2015, pers. comm.). In addition, we have added Georgia Department of Transportation (GDOT) to the list of local, State, or Federal government entities that own or manage lands where white fringeless orchid is present (Table 2). A revised summary of the species' distribution follows.

TABLE 1—COUNTY-LEVEL DISTRIBUTION OF EXTANT AND UNCERTAIN STATUS WHITE FRINGELESS ORCHID OCCURRENCES, CIRCA 1991 (SHEA 1992) AND 2014 (ANHP 2014, GDNR 2014, KSNPC 2014, MDWFP 2014, NCDENR 2014, SCDNR 2012, SCHOTZ 2015, AND TDEC 2014)

State	County	1991		2014	
		Extant	Uncertain	Extant	Uncertain
Alabama	Calhoun			2	
	Clay		1	1	
	Cleburne			1	
	DeKalb			1	
	Jackson				1
	Marion	1		1	2
	Tuscaloosa	1		1	
	Winston	1		1	
Georgia	Bartow			1	
	Carroll	2		2	
	Chattooga			1	
	Cobb	1			
	Coweta	1		1	
	Forsyth		1		1
	Pickens			1	
	Rabun	1		1	
	Stephens	1		1	
Kentucky	Laurel			2	2
	McCreary	4		2	1
	Pulaski	1	1	2	
	Whitley			1	
Mississippi	Alcorn				1
	Itawamba			2	1
	Tishomingo			1	1
South Carolina	Greenville	1			1
Tennessee	Bledsoe		2	2	1
	Cumberland			1	
	Fentress			2	
	Franklin	3	2	5	5

TABLE 1—COUNTY-LEVEL DISTRIBUTION OF EXTANT AND UNCERTAIN STATUS WHITE FRINGELESS ORCHID OCCURRENCES, CIRCA 1991 (SHEA 1992) AND 2014 (ANHP 2014, GDNR 2014, KSNPC 2014, MDWFP 2014, NCDENR 2014, SCDNR 2012, SCHOTZ 2015, AND TDEC 2014)—Continued

State	County	1991		2014	
		Extant	Uncertain	Extant	Uncertain
	Grundy	5	5	4	4
	Marion	2		8	
	McMinn	1		1	
	Polk			1	
	Scott			1	
	Sequatchie	2	1	1	1
	Van Buren	2		5	1
Total		30	13	57	23

TABLE 2—STATUS AND NUMBER OF WHITE FRINGELESS ORCHID OCCURRENCES ON PUBLICLY OWNED OR MANAGED LANDS

[**Note:** One site is on privately owned lands that the Georgia Department of Natural Resources (GDNR) leases for use as a wildlife management area]

Ownership	Extant	Uncertain	Extirpated	Historical
National Park Service	3			
U.S. Forest Service	9	3	3	
U.S. Fish and Wildlife Service	2			
Alabama Department of Conservation and Natural Resources		1		
Georgia Department of Natural Resources	2			
Georgia Department of Transportation	1			
Kentucky State Nature Preserves Commission	1			1
Mississippi Department of Fish, Wildlife, and Parks	1			
North Carolina Plant Conservation Program			1	
South Carolina State Parks		1		
Tennessee Department of Transportation	1			
Tennessee Division of Forestry	7			
Tennessee State Parks	5	1		1
Tennessee Wildlife Resources Agency	1		1	
Forsyth County, Georgia		1		
Total	33	7	5	2

All other information from the "Distribution" discussion in the proposed rule (80 FR 55304; September 15, 2015) remains unchanged.

Summary of Comments and Recommendations

In the proposed rule published on September 15, 2015 (80 FR 55304), we requested that all interested parties submit written comments on the proposal by November 16, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. On April 14, 2016 (81 FR 22041), we reopened the comment period for an additional 60 days, ending June 13, 2016. Newspaper notices inviting general public comment were published in the Asheville Citizen Times, Birmingham News, Chattanooga Times Free Press, Greenville News, Huntsville News, Knoxville News, Lexington Herald-Leader, and Northeast Mississippi Daily Journal. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with white fringeless orchid and its habitat, biological needs, and threats or general conservation biology of orchids. We received responses from two of the peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of white fringeless orchid. The peer reviewers generally concurred with our evaluation and the conclusion we reached regarding the proposal to list the white fringeless orchid as a threatened species. One peer reviewer commented on the information on the species' habitat, biology, and threats, and provided minor updates regarding the status and distribution of white fringeless orchid in the State of Georgia. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: One reviewer commented on subtle differences in descriptions of white fringeless orchid habitat that have been recorded over time, suggesting that descriptions from the 1970s (Luer 1975, p. 186; Shea 1992, p. 19) or later might represent altered conditions, as compared to the earliest published habitat description (Correll 1941, pp. 156–157). This reviewer noted that Correll (1941, pp. 156–157) used the term "grassy," citing an herbarium specimen label, in describing the habitat, possibly implying the presence of more open conditions in which a grassy herbaceous community would have been present. This reviewer speculated that the shaded, forested conditions, discussed in more contemporary descriptions of white fringeless orchid habitat, might have

resulted from land use and regulatory changes (*i.e.*, regulation of impacts to wetlands) that have favored the development of more densely stocked, heavily shaded contemporary forest conditions in habitats where the white fringeless orchid occurs. This reviewer opined that current habitat conditions where the white fringeless orchid occurs do not, in many cases, represent the optimal range of habitat variation for the species. This reviewer also cited short-term positive responses of white fringeless orchid populations to timber removal in adjacent uplands, a phenomenon that we discussed in the proposed listing rule, as evidence of the positive influences of increased light and water availability, but which diminish with regrowth of even-aged hardwood stands in the absence of ecological disturbance, such as fire. One commenter also suggested that fire could be a beneficial management tool in conservation efforts for the white fringeless orchid.

Our Response: We agree with the peer reviewer's observations about the potential beneficial effects of ecological disturbance, such as fire, in creating environmental conditions that stimulate population growth and increased flower production in the white fringeless orchid. The proposed listing rule (80 FR 55304; September 15, 2015) discusses short-term positive responses to timber harvesting that have been observed in some white fringeless orchid populations and notes that Schotz (2015, p. 4) suggested that fire could play a role in regulating woody vegetation growth in uplands surrounding white fringeless orchid habitats. The proposed rule also reports on Hoy's (2012, p. 26) suggestion that high stem densities, which resulted from succession following canopy removal, shortened the hydroperiod of wetlands at a white fringeless orchid site in Kentucky. Evaluating the potential role of fire or other ecological disturbance in managing habitat for the white fringeless orchid will be considered during preparation of a recovery plan (see discussion about recovery plans under the heading Available Conservation Measures, below) for the species after it is listed.

(2) Comment: One peer reviewer commented that the use of herbicides on industrial and small-scale timber operations appears to be increasing significantly in the State of Georgia and that we should include it as a threat of significant concern not only to the white fringeless orchid but also to the herbaceous plant community of which it is part, as well as pollinators. The reviewer did not provide specific data in support of this comment.

Our Response: We agree that increased use of herbicides in timber operations in or near habitats where the white fringeless orchid occurs could be detrimental to the species, as well as other herbaceous plants and pollinators, but we are not aware of specific instances where adverse effects to the white fringeless orchid have occurred due to herbicide use in silvicultural operations, nor do we have data regarding the rates at which herbicides are used in silvicultural operations presently or in the past. Therefore, we have not added a discussion of herbicide use in silvicultural operations in the analysis of factors affecting the white fringeless orchid.

(3) Comment: One peer reviewer commented that Atlanta Botanical Garden (ABG) has developed asymbiotic (in the absence of symbiotic fungi), aseptic (free from contamination caused by harmful bacteria, viruses, or other microorganisms) *in vitro* propagation protocols that achieve much higher germination rates than the rate (less than 3 percent) observed by other researchers in separate studies of *in vitro* and *in situ* seedling development (Zettler and McInnis 1992, pp. 157–160; Zettler 1994, p. 65).

Our Response: The Service is aware of the success that ABG has achieved in propagating the white fringeless orchid; however, we are not aware of specific rates of seedling germination that we can include in this rule. Effective propagation protocols could be a valuable tool, combined with science-based habitat management practices, for augmenting currently small populations or restoring populations in sites where the species is no longer extant but suitable habitat conditions remain. We will consider this information during development of a recovery plan for the species.

(4) Comment: One peer reviewer commented on the discussion in the proposed listing rule about rates of fruit set in relation to population size, which cited Zettler *et al.* (1996, p. 22) and Zettler and McInnis (1992, p. 160) in suggesting that inbreeding depression could be a cause for the lower fruit set observed in smaller populations. The peer reviewer commented that low census numbers of flowering individuals and highly fragmented or degraded pollinator networks also could influence the low rates observed in smaller populations.

Our Response: We agree with the peer reviewer that other factors besides inbreeding depression, caused by increased rates of self-pollination, could contribute to low rates of fruit set in small populations of the white fringeless orchid. However, we are not aware of specific data that indicate what those other factors might be.

Federal Agency Comments

(5) Comment: The Tennessee Valley Authority (TVA) commented that nearly 20 percent of extant white fringeless orchid occurrences are located in transportation or utility rights-of-way, illustrating that the species occurs in these settings at a disproportionately high rate when compared to their overall prevalence on the landscape. The TVA also commented that the proposed rule highlights the beneficial role that vegetation maintenance, if properly conducted, can play in maintaining suitable habitat for the white fringeless orchid and that herbicide resistance in the species could, in part, explain the positive response seen in one population following herbicide application in a TVA right-of-way.

Our Response: We acknowledge that current distribution data indicate that the white fringeless orchid occurs in transportation or utility rights-of-way at a disproportionately high rate compared to the overall prevalence of these features on the landscape. One possible cause for the disproportionally high numbers of populations known from rights-of-way is that these areas are surveyed by TVA and other utility or transportation departments more frequently or intensively than the forested habitats where most populations are located. It might also be true that white fringeless orchid populations respond positively to the well-lit conditions found in rights-of-way, assuming that other threats related to maintenance or unauthorized use of rights-of-way (*e.g.*, off-road vehicle use) do not adversely affect the plants or their habitat. We commend TVA on its efforts to prevent adverse effects to rare species while conducting vegetation management or infrastructure maintenance in rights-of-way.

Regarding the comment that herbicide resistance could explain the species' positive response to selective herbicide application, we are not aware of any data to support the assertion that the species is resistant to any registered herbicide products. It is possible that the selective nature of herbicide application to woody species by TVA or its contractors, rather than herbicide resistance generally, is responsible for the positive response seen following one known instance of potential exposure in a TVA right-of-way. This warrants further research.

Comments From States

(6) Comment: The Georgia Department of Transportation (GDOT) commented that an occurrence located in a transportation right-of-way in Chattooga County, Georgia, is on lands owned by GDOT. GDOT also commented on its collaborative efforts with Georgia Power and ABG to manage the habitat and white fringeless orchid population at this site.

Our Response: We include this information in this rule by adding GDOT to Table 2, above, which reports the number of occurrences on publicly owned or managed lands, and by discussing conservation efforts to restore this population under the heading Summary of Biological Status and Threats, below.

Public Comments

(7) Comment: We received one comment recommending against listing the white fringeless orchid as threatened or endangered. The commenter stated that this opinion was based on the following: (1) The funds and human hours that would be spent on the white fringeless orchid could be spent elsewhere, such as on priority species; and (2) the species has already declined in great numbers since it became a candidate for listing in 1999, and it seems like more information is needed to allow for preparation of a recovery plan for the species.

Our Response: The Act (16 U.S.C. 1531 *et seq.*) requires the Service to identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial data. As discussed in the proposed rule (80 FR 55304; September 15, 2015) and as summarized here, we have determined the threats to the white fringeless orchid warrant its listing as threatened under the Act.

Regarding the commenter's assertion that the species has already declined in great numbers since 1999, the Service acknowledges that some populations have been lost or have declined since the species became a candidate for listing, but notes that several new populations have been discovered since that time. The Service's determination to list the species as threatened, rather than endangered, reflects our conclusion that the species is not at imminent risk of extinction. Further, contrary to the commenter's assertion that more information is needed to prepare a recovery plan, there are considerable biological data available, as summarized in the proposed rule (80 FR 55304; September 15, 2015), upon which a recovery plan can be based, as well as ongoing conservation efforts that the Service and its partners can build upon and learn from as we develop a recovery plan for the white fringeless orchid.

(8) Comment: We received comments from four individuals or organizations recommending that we designate critical habitat for white fringeless orchid. Two of the commenters provided no information or data to support their recommendations. One commenter suggested that critical habitat would benefit conservation efforts for the white fringeless orchid for the following reasons: Most of the threats described in the proposed listing rule are related to habitat disturbance or loss; many populations are small and, in the commenter's opinion, would likely no longer exist absent critical habitat designation; and the threat of unauthorized collection is, in the commenter's opinion, neither imminent nor present. This commenter also suggested that a threatened species would experience protective benefits from critical habitat designation because of the requirement for Federal agencies to consult with the Service about projects that could potentially adversely affect critical habitat. Another commenter who recommended designating critical habitat cited the habitat specificity of the species and threats from human activity, such as logging and construction, as the reasons for this recommendation.

Our Response: In the proposed rule (80 FR 55304; September 15, 2015), we weighed the expected increase in threats associated with a critical habitat designation against the benefits that might be gained by a critical habitat designation. We acknowledge that, as two commenters observed, most of the threats described in the proposed rule are related to disturbance or destruction of habitat. However, many of the threats to habitat would not be alleviated by designation of critical habitat, as they are not caused by actions or undertakings of Federal agencies. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of that species' critical habitat. Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus, including logging and construction on privately owned lands. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of its proposed action on any designated critical habitat. Similar to the Act's requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery.

Some of the populations on Federal lands are the largest known, and any future activity involving a Federal action that would destroy or adversely modify critical habitat at these sites would also likely jeopardize the species' continued existence. Consultation with respect to critical habitat would provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of a critical habitat designation, areas that support white fringeless orchid will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate.

We disagree with one commenter's assertion that because most populations are small they likely would no longer exist absent a critical habitat designation. On the contrary, the fact that most of the populations are small, combined with the fact that they are located in remote sites that are infrequently monitored by conservation organizations or law enforcement, led the Service to conclude that publishing locations of those populations in maps that would be required for a critical habitat designation would heighten the threat of collection. In small populations, the collection of even a few individuals would diminish reproductive output and likely reduce genetic diversity, reducing the resilience of those populations to recover from other threats to habitat or individual plants.

Despite one commenter's assertion that the threat of collection is neither imminent nor present, the proposed rule documented that this threat is both present and imminent, as observed by Service and Tennessee Department of Environment and Conservation (TDEC) biologists during 2014. Identification of critical habitat would increase the magnitude and severity of this threat by spatially depicting exactly where the species may be found and widely publicizing this information, exposing these fragile populations and their habitat to greater risks. We have reviewed management plans and other documents produced by Federal and State conservation agencies and scientific literature, and detailed information on the specific locations of white fringeless orchid sites is not currently available.

(9) Comment: We received comments from Georgia Power informing us of conservation efforts directed towards a roadside population in Chattooga County, Georgia, which also lies within a power transmission right-of-way. Georgia Power also commented on its collaborative efforts with GDNR to monitor, protect, and manage the occurrence located on GDNR lands in Rabun County, Georgia.

Our Response: We have included this information under the heading Summary of Biological Status and Threats.

Summary of Changes From the Proposed Rule

Based on these comments, in this final rule, we include two minor changes from the proposed listing rule (80 FR 55304; September 15, 2015). Those changes are discussed above under the heading *Distribution.* Additionally, under the heading Summary of Biological Status and Threats, we include a discussion of conservation efforts based on comments we received from GDOT and Georgia Power.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In the proposed listing rule (80 FR 55304; September 15, 2015), we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the white fringeless orchid and provided a detailed account of those threats and the biological status of white fringeless orchid.

We have determined that the threats to white fringeless orchid consist primarily of destruction and modification of habitat (Factor A) resulting in excessive shading, soil disturbance, altered hydrology, and proliferation of invasive plant species; collecting for recreational or commercial purposes (Factor B); herbivory (Factor C); and small population sizes and dependence on specific pollinators and fungi to complete its life cycle (Factor E). Existing regulatory mechanisms have not led to a reduction or removal of threats posed to the species from these factors (Factor D). We summarize each of those threats here. Please refer to the proposed listing rule (80 FR 55304; September 15, 2015) for the full discussion.

Habitat destruction and modification (Factor A) from development, silvicultural practices, excessive shading, and altered hydrology (*i.e.,* pond construction, beaver dam removal) have resulted in extirpation of the species from 10 sites (Shea 1992, pp. 15, 25; TDEC 2014). These threats, in addition to invasive plant species (U.S. Forest Service (USFS) 2008, p. 53; Richards 2013, pers. comm.; KSNPC 2014; TDEC 2014), feral hogs (Zettler 1994, p. 687; USFS 2008, p. 54; Richards 2013, pers. comm.; Richards 2014, pers. comm.; Tackett 2015, pers. comm.), and right-of-way maintenance (Taylor 2014, pers. comm.), are associated with habitat modifications affecting dozens of other occurrences that are extant or of uncertain status. The best available information indicates that habitat for many existing populations is adversely affected by factors that either directly harm individual white fringeless orchids or alter the plant communities, soils, and water flow in the sites where they occur. These factors include residential development, utility and road right-of-way maintenance, timber harvesting, invasive species encroachment, and vegetation succession in the absence of disturbance. Impacts to habitat from activities such as development and silvicultural practices include direct impacts such as habitat conversion and ground disturbance, and indirect impacts such as altered hydrology, increased shading, and introduction of invasive, nonnative plants. The threats to the white fringeless orchid from habitat destruction and modification are occurring throughout much of the species' range and these population-level impacts are expected to continue into the foreseeable future.

During the comment period, GDOT and Georgia Power provided information on conservation efforts that have been directed to a roadside occurrence in Chattooga County, Georgia, which is located in a power transmission right-of-way. As noted in the proposed listing rule (80 FR 55304; September 15, 2015), this site was adversely affected by unauthorized collection in 2004, and remains vulnerable to this threat due to its location alongside a State highway. Georgia Power and GDOT have designated this site an "Environmentally Sensitive Area," restricting mowing and herbicide use. They are also working with ABG to augment the population at this occurrence with plants propagated from seed collected at this site. Georgia Power is also collaborating with GDNR to protect, monitor, and manage another occurrence, located in Rabun County, Georgia, and reported that a prescribed burn was recently conducted in the area where this occurrence is located. ABG staff have collected seeds from this population to produce propagated plants that will be used to augment the population at this occurrence.

Collecting for scientific, recreational, or commercial purposes (Factor B) has been determined to be the cause for extirpation of the white fringeless orchid at its type locality (Ettman and McAdoo 1979 cited in Zettler and Fairey 1990, p. 212), and recent evidence demonstrates that collection remains a threat to this species. Fungal pathogens have been identified as a threat to white fringeless orchid, but a threat with potentially greater impact associated with Factor C is inflorescence herbivory, presumably by deer (Zettler and Fairey 1990, p. 212–214). Flower herbivory has been reported at over one-third of extant occurrences and likely is a factor threatening most white fringeless orchid occurrences (Shea 1992, pp. 27, 61, 71–77, 95–97; TDEC 2012, p. 3; KSNPC 2014; TDEC 2014), especially where low numbers of plants are present. Tuber herbivory or soil disturbance by feral hogs has been reported at multiple occurrences, including the site harboring the largest known white fringeless orchid population (Zettler 1994, p. 687; USFS 2008, p. 54).

The effects of all of the above-described threats are intensified by the small population sizes that characterize a majority of occurrences throughout the species' geographic range (Factor E), due to their diminished capacity to recover from loss of individuals or low reproductive output resulting from other threats (Zettler *et al.* 1996, p. 22). Further, the species' dependence on a limited number of Lepidoptera (Zettler *et al.* 1996, p. 16) and a single species of fungi (Currah *et al.* 1997, p. 30) to complete its life cycle make it vulnerable to disturbances that diminish habitat suitability for these taxa as well (Factor E). Climate has changed in recent decades in the southeastern United States, and the rate of change likely will continue to increase into the future (Karl *et al.* 2009, pp. 111–112) (Factor E). Although we do not have data to determine specifically how the habitats where the white fringeless orchid occurs will be affected by, or how the species will respond to, these changes, the potential for adverse effects to the white fringeless orchid, either through changes in habitat suitability or effects on populations of pollinators or mycorrhizal fungi, is likely to increase as climate continues to change at an accelerating rate.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines an endangered species as any species that is "in danger of extinction throughout all or a significant portion of its range" and a threatened species as any species "that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future." We find that white fringeless orchid is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the low to moderate threats currently impacting the species. The species is known to be extant at 57 locations (see Table 1, above), but low numbers of individuals have been observed at more than half of these (see Figure 1 in the proposed listing rule: 80 FR 55304, September 15, 2015, p. 55309), distributed across the species' range, and their persistence into the future is uncertain. Furthermore, the threats of habitat destruction or modification and herbivory are present throughout the species' geographic range. Left unmanaged, these threats will likely lead to further reductions in the species' geographic range and abundance at individual sites, increasing the risk of extinction to the point of endangerment. The combination of small population sizes combined with the white fringeless orchid's dependence on specific pollinators and fungi to complete its life cycle diminishes the resilience of populations to recover from adverse effects of threats due to habitat destruction or modification and herbivory.

Therefore, on the basis of the best available scientific and commercial information, we are listing the white fringeless orchid as threatened in accordance with sections 3(20) and 4(a)(1) of the Act. The species does not currently meet the definition of endangered species, because a sufficient number of robust populations are present on publicly owned or managed lands, which despite numerous threats, are actively managed such that the risk of extinction is not imminent. Furthermore, conservation efforts have been initiated that could be effective in reducing threats by increasing population sizes and improving habitat conditions across much of the species' geographic range.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the white fringeless orchid is threatened throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*) or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Georgia, South Carolina, Alabama, Mississippi, and Tennessee and the Commonwealth of Kentucky will be eligible for Federal funds to implement management actions that promote the protection or recovery of the white fringeless orchid. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the white fringeless orchid. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require consultation, as described in the preceding paragraph, include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service (USFS), and National Park Service (NPS); issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; powerline right-of-way construction and maintenance by the TVA; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. With regard to threatened plants, 50 CFR 17.71 provides that all of the prohibitions in 50 CFR 17.61 applicable to endangered plants apply to threatened plants, with one exception. Thus, the regulations at 50 CFR 17.71(a) make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction any threatened plant. There is an exception for the seeds of cultivated specimens, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container. The Act itself, at 16 U.S.C. 1538(a)(2)(B), prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law.

Under 50 CFR 17.72, we may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. A permit issued under this section must be for one of the following: Scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of white fringeless orchid, including interstate transportation across State lines and import or export across international boundaries, except for properly documented antique specimens of this species at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized removal, damage, or destruction of white fringeless orchid plants from populations located on Federal land (USFS, NPS, and Service lands); and

(3) Unauthorized removal, damage, or destruction of white fringeless orchid plants on private land in violation of any State regulation, including criminal trespass.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the white fringeless orchid occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for "*Platanthera integrilabia*" to the List of Endangered and Threatened

Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	* * *
Platanthera integrilabia ...	White fringeless orchid ...	Wherever found	T	81 FR [*Insert* ***Federal Register*** *page where the document begins*]; September 13, 2016.
*	*	*	*	* * *

Dated: August 23, 2016.

James W. Kurth,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–21954 Filed 9–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE867

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused rock sole Community Development Quota (CDQ) for yellowfin sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2016 total allowable catch of yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective September 13, 2016 through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 rock sole and yellowfin sole CDQ reserves specified in the BSAI are 6,160 metric tons (mt), and 15,773 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 48722, July 26, 2016). The 2016 rock sole and yellowfin sole CDQ ABC reserves are 11,078 mt and 6,879 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 48722, July 26, 2016).

The Aleutian Pribilof Island Community Development Association has requested that NMFS exchange 700 mt of rock sole CDQ reserves for 700 mt of yellowfin sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 700 mt of rock sole CDQ reserves for 700 mt of yellowfin sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016), and following revision (81 FR 48722, July 26, 2016), are revised as follows:

TABLE 11—FINAL 2016 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	7,900	7,000	9,000	20,585	56,450	145,065
CDQ	845	749	963	1,832	5,460	16,473
ICA	200	75	10	5,000	6,000	3,500
BSAI trawl limited access	685	618	161	0	0	14,979
Amendment 80	6,169	5,558	7,866	13,753	44,990	110,113
Alaska Groundfish Cooperative	3,271	2,947	4,171	1,411	11,129	43,748
Alaska Seafood Cooperative	2,898	2,611	3,695	12,342	33,861	66,365

Note: Sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2016 AND 2017 ABC SURPLUS, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

Sector	2016 Flathead sole	2016 Rock sole	2016 Yellowfin sole	2017 Flathead sole	2017 Rock sole	2017 Yellowfin sole
ABC	66,250	161,100	211,700	64,580	145,000	203,500
TAC	20,585	56,450	145,065	21,000	57,100	144,000
ABC surplus	45,665	104,650	66,635	43,580	87,900	59,500
ABC reserve	45,665	104,650	66,635	43,580	87,900	59,500
CDQ ABC reserve	5,257	11,778	6,179	4,663	9,405	6,367
Amendment 80 ABC reserve	40,408	92,872	60,456	38,917	78,495	53,134
Alaska Groundfish Cooperative for 2016 [1]	4,145	22,974	24,019	n/a	n/a	n/a
Alaska Seafood Cooperative for 2016 [1]	36,263	69,898	36,437	n/a	n/a	n/a

[1] The 2017 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2016.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the flatfish exchange by the Aleutian Pribilof Island Community Development Association in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 1, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21941 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 177
Tuesday, September 13, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 51

[Docket ID OCC–2016–0017]

RIN 1557–AE07

Receiverships for Uninsured National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing a rule addressing the conduct of receiverships for national banks that are not insured by the Federal Deposit Insurance Corporation (FDIC) (uninsured banks) and for which the FDIC would not be appointed as receiver. The proposed rule would implement the provisions of the National Bank Act (NBA) that provide the legal framework for receiverships of such institutions.

DATES: Comments must be received no later than November 14, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title "Receiverships for Uninsured National Banks" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—"Regulations.gov": Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0017" in the Search box and click "Search." Click on "Comment Now" to submit public comments.

- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, mail stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2016–0017" in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0017" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Mitchell Plave, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, or Richard Cleva, Senior Counsel, Bank Activities and Structure Division, (202) 649–5500, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed rule addresses how the OCC would conduct the receivership of an uninsured national bank.[1] The proposed rule would implement the provisions of the NBA that provide the legal framework for receiverships for such institutions, 12 U.S.C. 191–200.[2]

There are only a small number of uninsured national banks in operation today. The OCC, however, retains the authority to grant new charters to entities whose business plan does not call for them to obtain deposit insurance if the OCC determines that the entities have a reasonable chance of succeeding and can operate in a safe and sound manner, among other considerations. Although the OCC has not placed an uninsured national bank into receivership since the Great Depression, there are several reasons to consider articulating a framework for such receiverships now. First, since the financial crisis of 2007–2008, regulators have undertaken, on both a domestic and coordinated global basis, to evaluate, discuss, and maintain preparedness for effective governmental responses to critical financial distress. This focus highlights the need to consider an appropriate resolution framework for entities, such as uninsured national banks, that currently lack such a framework. Second, the establishment of a framework for receivership for these uninsured institutions would provide clarity to market participants about how they will be treated in receivership. The proposed rule would set forth a framework the OCC can use should an uninsured institution weaken and fail, be it an uninsured trust bank or another uninsured special purpose bank.

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[1] Unlike national trust banks, all Federal savings associations (FSAs), including FSA trust banks, are required to be insured. For this reason, this proposed rule would not apply to FSAs, given that receiverships for FSAs would be conducted by the FDIC.

[2] The proposed rule establishes the basic receivership framework, which may be supplemented over time with more detailed guidance, for example, concerning the details of the receiver's administration of the receivership estate.

II. Background

Statutory Authority for Receiverships

From the beginning of the national banking system in 1863 until the creation of the FDIC in 1933, receiverships of national banks were conducted by the Comptroller and by a receiver who was appointed by, and worked under the direction of, the Comptroller.[3] The Comptroller and receiver had the powers and responsibilities set out in the receivership provisions of the NBA and exercised the powers available at common law for receivers.[4] During this time, a substantial body of case law developed applying the statutory provisions and common law principles to national bank receiverships.

In 1933, the FDIC was established and, among its other responsibilities, was designated as the receiver for national banks.[5] As receiver, the FDIC has both the powers available to national bank receivers under the NBA and additional powers provided to the FDIC in the Federal Deposit Insurance Act (FDIA). When the FDIC serves as receiver, it does not operate under the direction of the Comptroller, unlike the pre-1933 non-FDIC receivers.[6] From 1933 through 1989, the FDIC was designated to be appointed receiver for national banks generally, both insured and uninsured.[7]

The receivership regime for national banks was significantly changed again when Congress adopted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). Among many other consequences, the amendments to the FDIA in FIRREA resulted in the FDIC being specified as the mandatory receiver only for insured depository institutions. Thus, today the FDIC is the required receiver only for an insured national (or state) bank.[8] Congress also subsequently amended the receivership appointment provisions of the NBA, 12 U.S.C. 191, to provide that the Comptroller may appoint a receiver for any national bank and that, if the bank is an insured bank, the receiver must be the FDIC.[9] Post-FIRREA and post-FDICIA, the FDIA no longer expressly addresses receiverships of uninsured national banks, and there are no statutory limits on the Comptroller's discretion with respect to whom to appoint as receiver of an uninsured bank.

Based on this statutory history, it appears that today, unlike in the period between 1933 and 1989, the FDIA would not apply to a receivership of an uninsured bank conducted by the OCC, and that such a receivership would be governed exclusively by the NBA provisions, the common law of receivers, and cases applying the statutes and common law to national bank receiverships.[10] FIRREA and FDICIA greatly expanded the FDIC's powers in resolving failed insured depository institutions. The OCC believes that those additional powers are not available to the OCC as receiver of uninsured banks under the NBA.

Uninsured Banks Supervised by the OCC

As of May 2016, the OCC supervises 52 uninsured banks. Currently, all of these institutions are trust banks. The OCC may charter national banks whose operations are limited to those of a trust company and related activities (national trust bank).[11] The activities of national trust banks are similar to those of trust departments of full-service banks. But unlike a trust department, they are not part of a larger bank that also engages in commercial banking. All but a handful of the national trust banks do not engage in the business of receiving deposits and instead hold trust funds, which are off-balance sheet assets that are not considered to be deposits and are not insured by the FDIC.

National trust banks typically have few assets on the balance sheet, usually composed of cash on deposit with an insured depository institution, investment securities, premises and equipment, and intangible assets. These banks exercise fiduciary and custody powers, do not make loans, do not rely on deposit funding, and consequently have simple liquidity management programs. In view of these differences, the OCC typically requires these banks to hold capital in a specific minimum amount; as a result they hold capital in amounts that substantially exceed the "well capitalized" standard that pertains when national banks calculate their capital pursuant to the OCC's rules in 12 CFR part 3.

The business model of national trust banks is to generate income in the form of fees by offering fiduciary and custodial services that generally fall into one or more of a few broad categories. Some of these national trust banks focus on institutional asset management, providing trust and custodial services for investment portfolios of pension plans, foundations and endowments, and other entities, often with an investment management component. These firms often also offer private wealth management and individual retirement savings services. These services provided by national trust banks are similar to those provided by other non-bank investment management firms.

A few other national trust banks serve primarily as a fiduciary and custodian to facilitate the establishment of Individual Retirement Accounts by customers of an affiliated mutual fund complex or broker-dealer firm. While it is not common, a few national trust banks have been established for a special purpose within a larger financial company to accomplish a transition or other specific purpose over a limited time period, such as facilitating a consolidation.

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[3] *See Earle* v. *Penn,* 178 U.S. 449 (1900); *Cook County Nat'l Bank* v. *United States,* 107 U.S. 445 (1883).

[4] *See* 12 U.S.C. 191–200.

[5] *See* Banking Act of 1933, 73d Cong., 1st Sess., ch. 89, section 12B(1), 48 Stat. 172 (1933).

[6] *See* 12 U.S.C. 1821(c)(2)(C).

[7] For example, before its amendment in 1989, section 11(c) of the FDIA, 12 U.S.C. 1821(c) stated that, whenever the Comptroller appointed a receiver for any insured or uninsured national bank or Federal branch, the Comptroller "shall appoint" the FDIC receiver for such closed bank. 12 U.S.C. 1821(c) (1988). Federal branches were added to section 1821(c) in 1978 when Federal branches were created in the International Banking Act, 12 U.S.C. 3101 *et seq.*

[8] Section 11(c)(2)(A)(ii) of the FDIA provides that the FDIC "shall" be appointed receiver, and "shall" accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law. 12 U.S.C. 1821(c)(2)(A)(ii). The term "Federal depository institution" includes national banks. 12 U.S.C. 1813(c)(4).

[9] In 1991, in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Congress amended 12 U.S.C. 191 to provide that the Comptroller may appoint the FDIC "as receiver for any national banking association." Public Law 102–242, section 133, 105 Stat. 2236, 2271. FDICIA also amended section 191 to set out the current grounds for receivership. Prior to the amendment, section 191 provided that the Comptroller may appoint a receiver for one of three grounds previously set out in the statute. In October 1992, before the amendment went into effect, Congress revised the language to provide that the receiver shall be the FDIC "if the national bank is an insured bank." Act of October 28, 1992, Public Law 102–550, Title XVI, Subtitle A, section 1609, 106 Stat. 4090 (1992).

[10] While the receivership operations will be governed by the NBA provisions, the common law of receivers, and cases applying the statutes and common law to national bank receiverships, the grounds for appointment of a receiver in the NBA for a national bank, including an uninsured bank, incorporate by reference the grounds for appointment in the FDIA. *See* 12 U.S.C. 191(a)(1) (referring to 12 U.S.C. 1821(c)(5)).

[11] *See, e.g.,* 12 U.S.C. 27(a); 12 CFR 5.20(*l*). The OCC also charters Federal savings associations. Unlike national trust banks, all Federal savings associations are required to be insured.

Some national trust banks provide custodial services. One example of this type of service is corporate trust accounts, under which the bank performs services for others in connection with their issuance, transfer, and registration of debt or equity securities. Other custody accounts may be a holding facility for customer securities, where the bank assists institutional customers with global settlement and safekeeping of the customer's securities.

Many of the uninsured national trust banks are subsidiaries or affiliates of a full-service insured national bank. Another group are affiliates of an insured state bank. In these cases where the national trust bank is part of a bank holding company, the bank and the company have decided for a variety of business reasons to offer some fiduciary services to their customers in a separate national trust bank charter. National trust banks affiliated with other banks can vary greatly in complexity, in the type of fiduciary or custody businesses they engage in, and in the amount of assets under management or administration. Typically they maintain a few thousand accounts for individuals or family trusts containing assets totaling in the range of $10 billion, or in other cases maintaining as many as 10,000 corporate custody accounts totaling in the range of $20 billion.

Other uninsured national trust banks are not affiliated with an insured depository institution, but are affiliated with an investment management firm or other financial services firm. These national trust banks provide fiduciary and custody services for customers of the firm. National trust banks affiliated with an investment management firm or other financial services firm also can vary greatly in complexity, in the type of fiduciary or custody businesses they engage in, and in the amount of assets under management or administration. While these national trust banks may, in exceptional cases, hold as much as $1 trillion in fiduciary and custodial assets, they more commonly hold assets in the $5–$50 billion range across a few thousand accounts.

Still other national trust banks have no affiliation with a larger parent company. These independent firms typically manage a few billion dollars in fiduciary and custodial assets across a few thousand accounts, while others might be described as boutique trust firms, not affiliated with a larger parent company, with a few employees, fewer than 500 customers, and $1 billion or less in fiduciary assets.

The OCC has not appointed a receiver for an uninsured bank since shortly after the Congress established the FDIC in response to the banking panics of 1930–1933. Because of the fundamentally different business model of national trust banks, compared to commercial and consumer banks and savings associations noted above, national trust banks face very different types of risks. National trust banks primarily face operational, compliance, strategic, and reputational risks without the credit and liquidity risks that additionally impact the solvency of commercial and consumer banks. While any of these risks can result in the precipitous failure of a bank or savings association, from a historical perspective, trust banks have been more likely to decline into a weakened condition, allowing the OCC and the institution the time needed to find other solutions for rehabilitating the institution or to successfully resolve the institution without the need to appoint a receiver.[12]

The OCC believes it would nevertheless be beneficial to financial market participants and the broader community of regulators for the OCC to clarify the receivership framework for uninsured banks. Although the OCC conducted 2,762 receiverships pursuant to this framework in the years prior to the creation of the FDIC,[13] and the associated legal issues are the subject of a robust body of published judicial precedents, the details have not been widely articulated in recent jurisprudence or legal commentary. This proposal may also facilitate synergies with the ongoing efforts of U.S. and international financial regulators since the financial crisis to enhance our readiness to respond effectively to the different critical financial distresses that could manifest themselves unexpectedly in the diverse types of financial firms presently operating in the market.

Other Types of Uninsured National Banks

The OCC has the authority to charter and supervise special purpose banks with operations limited solely to providing fiduciary services.[14] In addition to national trust banks, the OCC also may charter other special purpose banks with business models that are within the business of banking. The OCC's rules provide that a special purpose bank must conduct at least one of the three core banking functions, namely receiving deposits, paying checks, or lending money.[15] As part of the agency's initiative on responsible innovation in the Federal banking system, the OCC is considering how best to implement a regulatory framework that is receptive to responsible innovation, such as advances in financial technology.[16] In conjunction with this effort, the OCC is considering whether a special purpose charter could be an appropriate entity for the delivery of banking services in new ways. For this reason, the OCC requests comment on the utility of the receivership structure in the proposed rule for receivership of such a special purpose bank.

Question 1. Would application of the NBA's legal framework for receiverships of uninsured banks to such innovative special purpose banks raise any unique considerations?

Uninsured Federal Branches and Agencies

In addition to conducting receiverships for uninsured national banks, the OCC has statutory authority to appoint and oversee a receiver for uninsured Federal branches and agencies (uninsured Federal branches).[17] While there are some powers and functions that overlap in conducting receiverships for uninsured banks and Federal branches, there are differences that make receiverships for Federal branches more complex.

The International Banking Act of 1978[18] (IBA) sets forth the legal framework for the establishment and operation of federally licensed branches and agencies of foreign banks. Under the IBA, a receiver appointed by the Comptroller for an uninsured Federal branch would exercise the same rights, privileges, powers, and authority in conducting the receivership as it would in conducting a receivership for an uninsured bank.[19] As such, with some exceptions, the provisions in the NBA for receiverships would generally apply to receiverships for Federal branches.[20] However, the nature of an uninsured Federal branch's more typical commercial banking type of business model, the overlay of other Federal laws including provisions on receiverships in the IBA, and concerns being deliberated currently on a global basis among financial regulators about the resolution of global systemically important banks make the subject of uninsured Federal branch resolutions a more complicated topic.

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[12] In some instances, uninsured trust banks enter into safeguard agreements with the OCC to facilitate early resolution through a sale, merger or liquidation, thereby avoiding the need for a receivership. These safeguard agreements are entered into as part of the licensing process and concern operations, capital, and liquidity.

[13] *Annual Report of the Comptroller of the Currency for the Year Ended October 31, 1934* at 33 (discussing the status of active and closed receiverships under the jurisdiction of the Comptroller between 1865 and 1934).

[14] 12 U.S.C. 27(a); 12 CFR 5.20(e)(1), 5.20(*l*).

[15] 12 CFR 5.20(e)(1).

[16] *See* OCC, *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* at 2 (March 2016) *available at http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf.*

[17] 12 U.S.C. 3102(j).

[18] 12 U.S.C. 3101 *et seq.*

[19] 12 U.S.C. 3102(j).

For this reason, the scope of this proposed rule does not extend to receiverships for uninsured Federal branches. The OCC will continue reviewing the regulatory and legal issues relating to receiverships for Federal branches and will confer with other regulators on these issues. The OCC may seek public input on this subject as part of our deliberations on the topic in the future.

Cost Implications of OCC Receivership Function

The OCC's establishment of a receivership framework may also raise cost implications for the OCC. In addition to the OCC's costs incidental to the selection and supervision of a receiver, and approval of claims against the receivership for a share of the receiver's liquidating dividends, the receiver for an uninsured national bank will, as a matter of necessity, incur administrative costs in performing liquidation functions. As discussed below, the NBA provides that the receiver's administrative expenses are to be paid first out of the assets of the receivership, but there may be circumstances where the receiver's administrative expenses exceed those resources.

The OCC is considering how it might cover these types of costs. One approach would be to build resources to defray these costs into our structure for collection of assessments from the uninsured institutions we supervise, in accordance with 12 CFR part 8. Any change to the OCC's assessments would be set forth in a separate notice of proposed rulemaking.

Question 2. The OCC requests comment on alternatives that might be implemented to take account of these cost considerations.

III. Proposed Rule and Request for Comment

Overview

The proposed rule, as described below, incorporates the framework set forth in the NBA for the Comptroller to appoint a receiver for an uninsured bank, generally under the same grounds for appointment of the FDIC as receiver for insured national banks. The uninsured bank may challenge the appointment in court, and the NBA affords jurisdiction to the appropriate United States district court for this purpose. The OCC will provide the public with notice of the appointment, as well as instructions for submitting claims against the uninsured bank in receivership. The OCC may appoint any person as receiver, including the OCC or another government agency.

The receiver carries out its duties under the direction of the Comptroller. Under the NBA, the OCC functions in two capacities. Its primary capacity is that of a regulatory agency, in which the OCC oversees national banks, Federal savings associations, and Federal branches and Federal agencies, supervising them under the charge of assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.[21] The OCC is also directed by the NBA to act in a receivership capacity, under which the OCC appoints and oversees receivers for uninsured banks, thereby facilitating the winding down of bank operations, assets, and accounts while minimizing disruptions to customers and creditors of the institution. These capacities are separate in a way that parallels the separate capacities of the FDIC which, in its corporate capacity, serves as the insurer of depository institutions and oversees state non-member banks, and, in its receivership capacity, oversees the winding down of failed insured depository institutions. These two capacities are distinct both functionally and legally and reflect different public policy roles. A separate legal status attaches to each capacity.[22] A receiver acting under either the NBA in the case of the OCC or the FDIA in the case of the FDIC "step[s] into the shoes of" the failed institution.[23]

Under the "separate capacities" doctrine, which has long been recognized in litigation involving the FDIC, it is well established that the agency, when acting in one capacity, is not liable for claims against the agency acting in its other capacity.[24] As a corollary to this doctrine, the assets the agency oversees in the receivership are limited to the funds making up the failed bank's estate. For these reasons, payment of claims or judgments concerning the receivership are made from the receivership estate, not from the agency's operating budget and funds.

The proposed rule reflects this well-established understanding of the functional and legal distinctions between the corporate and receiver capacities. The proposed rule follows the statutory framework under the NBA, under which persons with claims against an uninsured bank in receivership would file their claims with the receiver for the failed uninsured bank, for review by the OCC. In the event the OCC denies the claim, the only remedy available to the claimant is to bring a judicial action against the uninsured bank's receivership estate and assert the claim *de novo.* A person is also free to initiate its claim by bringing an action against the receivership estate in court for adjudication, and then submit the judgment to the OCC to participate in ratable dividends of liquidation proceeds along with other approved and adjudicated claims.[25]

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[20] This approach is consistent with the "national treatment" requirement in the IBA, 12 U.S.C. 3102(b).

[21] 12 U.S.C. 1.

[22] *See O'Melveny & Meyers* v. *FDIC,* 512 U.S. 79, 85 (1994) (finding that FDIC-Receiver "steps into the shoes" of the failed institution and is "not the United States"). The *O'Melveny & Meyers* case concerns a choice of law question in a professional malpractice suit brought against the former counsel for the savings and loan. The Court concluded that the FDIC as receiver asserts the rights of the failed bank in receivership, not of "FDIC-Corporate," and therefore state law, not Federal common law, applies. *See also Bullion Services* v. *Valley State Bank,* 50 F.3d 705, 708–709 (9th Cir. 1995) (noting that, under Federal law, the FDIC is empowered to operate to act in two entirely separate and distinct capacities) (citations omitted); *FDIC* v. *Fonesca,* 795 F.2d 1102, 1109 (1st Cir. 1986) (stating that " 'Corporate' FDIC and 'Receiver' FDIC are separate and distinct legal entities"); *Jones* v. *FDIC,* 748 F.2d 1400, 1402 (10th Cir. 1984) (same).

[23] *See supra,* note 22.

[24] *See Dababneh* v. *FDIC,* 971 F.2d 428, 432 (10th Cir. 1992) ("[b]ecause they are discrete legal entities, Corporate FDIC is not liable" for obligations and liabilities of the FDIC as receiver) (citations omitted); *accord FDIC* v. *Nichols,* 885 F. 2d 633, 636 (9th Cir. 1989) (recognizing the corporate-receiver distinction in a case involving the purchase of receivership assets by FDIC in its corporate capacity); *FDIC* v. *Fonseca,* 795 F.2d 1102, 1109 (1st Cir. 1986) (refusing to address claims asserted against FDIC in its corporate capacity that were based on actions taken by the FDIC as receiver); *Mill Creek Group, Inc.* v. *FDIC,* 136 F. Supp. 2d 36, 48 (D. Conn. 2001) (finding that FDIC in its corporate capacity could not be held liable for breach of a contract entered into by FDIC in its receiver capacity).

The same reasoning has been applied to cases involving the former Resolution Trust Corporation. *See, e.g., U.S.* v. *Schroeder,* 86 F.3d 114, 117 (8th Cir. 1996) (stating that it is "well established that the RTC, when acting in one capacity, is not liable for claims against the RTC acting in one of its other capacities"); *see also Howerton* v. *Designer Homes by Georges, Inc.,* 950 F.2d 281, 283 (5th Cir. 1992) ("The RTC, in its corporate capacity, is not liable for claims against the RTC in its capacity as conservator or receiver.")

Approved or adjudicated claims are paid solely out of the assets of the uninsured bank in receivership. As described in the proposed rule, the receiver liquidates the assets of the uninsured bank, with court approval, and pays the proceeds into an account as directed by the OCC. The categories of claims and the priority thereof for payment are set out in the proposed rule. The proposed rule also clarifies certain powers held by the receiver, and describes the receiver's duties in winding up the affairs of the uninsured bank.

Section-by-Section Analysis

Proposed § 51.1 identifies the purpose and scope of the proposed rule and clarifies that the proposal would apply to receiverships conducted by the OCC under the NBA for national banks that are not insured by the FDIC. The proposed rule does not extend to receiverships for uninsured Federal branches, although elements of the framework may be similar for uninsured Federal branch receiverships, which would also be resolved under provisions of the NBA. Proposed § 51.2 is based on 12 U.S.C. 191 and 192 and concerns appointment of a receiver. The proposed rule sets out the Comptroller's authority to appoint any person, including the OCC or another government agency, as receiver for an uninsured bank and provides that the receiver performs its duties subject to the approval and direction of the Comptroller.[26] If the Comptroller were to appoint the OCC as receiver, the OCC would act in a receivership capacity with respect to the uninsured bank in receivership, rather than in the OCC's supervisory capacity. As discussed above, this dual capacity (OCC as supervisor versus OCC as receivership sponsor for an uninsured bank) recognizes that, while the NBA makes the receivership oversight and claims review functions of the Comptroller part of the OCC's responsibilities, the receivership oversight role is unique and distinct from the OCC's role as a Federal regulatory agency and supervisor of national banks and Federal savings associations. This is comparable to the dual capacity of the FDIC's receivership function for insured depository institutions pursuant to the FDIA.

Proposed § 51.2 also provides that the Comptroller may require the receiver to post a bond or other security and the receiver may hire staff and professional advisors, with the approval of the Comptroller, if needed to carry out the receivership. This section also identifies the grounds for appointment of a receiver for an uninsured bank and notes that uninsured banks may seek judicial review of the appointment, pursuant to 12 U.S.C. 191.

Proposed § 51.3 provides that the OCC would provide notice to the public of the appointment of a receiver for the uninsured bank. The proposed rule specifies that one component of this notice will include publication in a newspaper of general circulation selected by the OCC for three consecutive months, as required by 12 U.S.C. 193. As a component of the OCC's notice to the public about the receivership, the OCC would also provide instructions for creditors and other claimants seeking to submit claims with the receiver for the uninsured bank.

The OCC believes that the purpose of section 193 may be better served by publication through means other than publication in a newspaper. For example, the OCC could provide direct notice to customers and creditors of the uninsured bank, to the extent the uninsured bank's records included current contact information. The OCC could also arrange to provide notice through electronic channels that customers would typically use to contact the uninsured bank, such as the uninsured bank's Web site. The OCC believes that an effective set of notice protocols would best be established on a case-by-case basis, in light of a specific uninsured bank's fiduciary and custodial activities, the types of customers served by the bank, coordination with other notice protocols under way for any related entity that is also undergoing resolution activity, and similar factors.

Question 3. The OCC invites comment on the appropriate types of, and channels for, notices of receiverships, as well as how frequently to provide these notices. Commenters are also invited to address whether customized notice should be provided in addition to the requirement for newspaper publication, which would apply in every case.

Proposed § 51.4 addresses the submission of claims to the receiver for an uninsured bank. Under proposed § 51.4(a), a person with a claim against the receivership may submit a claim to the OCC, which would consider the claim and make a determination concerning its validity and approved amount. This process reflects the provisions in 12 U.S.C. 193 and 194 regarding presentation of claims and payment of dividends on claims that are proved to the satisfaction of the Comptroller. Proposed § 51.4 also provides that the Comptroller would establish a deadline for filing claims with the receiver, which could not be earlier than 30 days after the three-month publication of notice required by proposed § 51.3. This provision reflects NBA case law that permitted the Comptroller to establish a date for filing claims against the receiver for a failed bank, before this responsibility shifted to the FDIC.[27]

Proposed § 51.4(b) clarifies that persons with claims against an uninsured bank in receivership may present their claims to a court of competent jurisdiction for adjudication, in addition to, or as an alternative to, filing a claim with the OCC. If successful in court, such persons would be required to submit a copy of the final judgment to the OCC to participate in ratable dividends of liquidation proceeds along with claims against the bank in receivership submitted to, and approved by, the OCC. The proposed rule requires submission of a copy of the court's final judgment to the OCC. This provision is based on 12 U.S.C. 193 and 194.

In this regard, the receivership regime established by the NBA differs somewhat from the approach set out in other resolution regimes, such as the bankruptcy provisions of the United States Code and the receivership provisions of the FDIA. Under those resolution regimes, creditors and claimants must generally submit their claims to the receivership estate for centralized administration and disposition, and claims that are not submitted by the claims deadline are barred from any participation in liquidation payments. The NBA provisions are different in that claimants are provided the opportunity to submit claims to the OCC for evaluation, but are not foreclosed from pursuing judicial resolution by filing litigation (or continuing a pre-existing lawsuit) in a court of competent jurisdiction against the uninsured bank in receivership.

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[25] *See First Nat'l Bank of Bethel* v. *Nat'l Pahquioque Bank,* 81 U.S. 383, 401 (1871).

[26] *But see* 12 U.S.C. 1821(c)(6) (Comptroller may appoint the FDIC as conservator or receiver and the FDIC has discretion to accept such appointment); *id.* at § 1821(c)(2)(C) (FDIC "not subject to any other agency" when acting as conservator or receiver"). Read together, these provisions likely mean that the provision in § 51.2 concerning oversight of the receiver by the Comptroller would not apply to the FDIC acting as conservator or receiver for an uninsured institution, should the Comptroller appoint the FDIC and the FDIC accept such an appointment.

[27] *See Queenan* v. *Mays,* 90 F.2d 525, 531 (10th Cir. 1937).

The claims filing deadline established by the Comptroller pursuant to proposed § 51.4(a) is the date by which claimants seeking review under the OCC's claims process must make their submission. Nevertheless, a claimant that has not made a submission to the OCC by the deadline is not barred from initiating judicial claims against the uninsured bank in receivership solely by virtue of missing the claims deadline.[28]

The NBA's receivership provisions are like the receivership regime established by the FDIC under the FDIA, however, in that the avenue available to a party whose claim has been denied by the FDIC or OCC performing the agencies' receivership claims functions is to file (or continue) a *de novo* judicial action asserting the facts and legal theory of the claim against the receivership of the bank. The NBA does not contemplate or support anything in the nature of further action by the claimant in an administrative or judicial forum against the OCC seeking review of the claim determination.

The OCC believes that the proposed claims process offers many claimants advantages over other methods of claims resolution. In particular, for customers of the institution, and for holders of receivables and other contractual credit claims against the uninsured bank, the extent and validity of the claim will frequently be clear from the books and records of the bank, account statements provided to customers, and similar documents. The claims process provides an efficient way for identification, in a timely way, of the largest group of claimants who will be eligible to participate in ratable distributions of liquidation dividends, as described in proposed § 51.8. The OCC's public notices of the receivership will provide claimants with information on how to obtain more detailed instructions for submitting claims to the OCC and on disposition of claims.

If a claimant asserts that a claim incorporates a valid and enforceable security interest in assets of the uninsured bank, the OCC believes that it may be in that claimant's interest to apprise the OCC of that claim through the claims process. While the NBA does not restrict the holder of a valid security interest in uninsured bank assets from enforcing that interest through applicable state law, making the OCC aware of the claim and presenting an opportunity for it to be evaluated creates an opportunity to explore whether the receivership estate might negotiate an arrangement that would provide the claimant the value of the security interest in a more efficient way. Also, if it turns out that a portion of the claim remains unsecured, the claimant will have presented their claim to the OCC, and would participate in ratable dividends if the OCC approved the claim. For these reasons, the OCC has included language in proposed § 51.4(a) referring equally to secured and unsecured claims.

Proposed § 51.4(c) provides that if a person with a claim against an uninsured bank in receivership also has an obligation owed to the bank, the claim and obligation will be set off against each other and only the net balance remaining after set-off will be considered as a claim. To this end, proposed § 51.4(a) also includes language referring to claims for set-off. The right of set-off where parties have mutual obligations has long been recognized as an equitable principle.[29] Well-settled case law has held that a receivership creditor's or other claimant's equitable right to a set-off is not precluded by the ratable distribution requirement of the NBA, provided such set-off is otherwise legally valid.[30] If, after set-off, an amount is owed to the creditor, the creditor may file a claim for the net amount remaining as any other unsecured creditor. Conversely, if, after set-off, an amount is owed to the bank, the creditor does not have a claim and the net amount remaining is an asset of the uninsured bank, which the receiver may obtain in connection with marshalling the assets (as further described in proposed § 51.7(a)).

Question 4. The OCC requests comment on whether there are additional characteristics of set-offs or other situations in which set-off may arise that should be included in the rule.

Proposed § 51.5 sets out the order of priorities for payment of administrative expenses of the receiver and claims against the uninsured bank in receivership. Under this section, the OCC would pay these expenses and claims in the following order: (1) Administrative expenses of the receiver; (2) unsecured creditors, including secured creditors to the extent their claim exceeds their valid and enforceable security interest; (3) creditors of the uninsured bank, if any, whose claims are subordinated to general creditor claims; and (4) shareholders of the uninsured bank. The order is based on case law and, in the case of the first priority for administrative expenses, on 12 U.S.C. 196.[31]

A creditor or other claimant with a security interest that was valid and enforceable as to its terms prior to the appointment of the receiver is entitled to exercise that security interest, outside the priority of distributions set out in the proposed rule.[32] If the collateral value exceeds the amount of the claim as it was immediately prior to the receiver's appointment, the surplus remains an asset of the uninsured bank, and the receiver may obtain it in connection with marshalling the assets (as further described in proposed § 51.7(a)).[33]

Liens arising from judicial determinations after the initiation of the receivership, as well as contractual liens that are triggered due to the appointment of a receiver or other post-appointment events, are not enforceable. This is because recognition of these liens would afford these claimants a priority that is not recognized under the established legal priorities described in proposed § 51.5. Similarly, a secured creditor is not entitled to a priority distribution of any portion of the claim that is not covered by the value of the collateral, because the creditor is in the position of an unsecured creditor for that portion of the claim, and must participate in ratable liquidation distributions on par with other unsecured creditors.[34]

Assets held by the uninsured bank in a fiduciary or custodial capacity, as identified on the bank's books and records, are not general assets of the bank. Section 51.8(b) of the proposed rule states this, for the absence of doubt. In the same vein, the claim of the customer to fiduciary or custodial assets is separate from, and not subject to, the priority set out in proposed § 51.5. Fiduciary and custodial customers of the bank have direct claims on those assets pursuant to their fiduciary or custodial account contracts. However, the priority of a fiduciary or custodial customer's other claims against the bank, if any, would remain subject to the priority described in proposed § 51.5. For example, a fiduciary customer's claim for a refund of prepaid investment management fees that were attributable to periods after the receiver returned the fiduciary assets to the customer, generally would be an unsecured claim covered by proposed § 51.5(b). The claims process described in § 51.4(b) of the proposed rule is available to a fiduciary customer, for both a direct claim on fiduciary assets, as well as a receivership claim for an obligation of the bank.

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[28] *See First Nat'l Bank of Bethel* v. *Nat'l Pahquioque Bank,* 81 U.S. 383, 401 (1871); *Queenan,* 90 F.2d at 531. As noted above, it is incumbent on a claimant that pursues the judicial route and ultimately obtains judicial relief to submit the final judicial determination and award to the OCC, in order to participate in the OCC's periodic ratable dividends of liquidation proceeds of the receivership estate. Except with respect to a valid and enforceable security interest in specific property of the uninsured bank established as part of a final judicial determination, there are no assets or funds available to a successful judicial claimant other than the ratable dividend process set out in 12 U.S.C. 194 and described in proposed § 51.8.

[29] *Scammon* v. *Kimball,* 92 U.S. 362 (1876); *Blount* v. *Windley,* 95 U.S. 173 (1877), 177; *Carr* v. *Hamilton,* 129 U.S. 252 (1889).

[30] *See Scott* v. *Armstrong,* 146 U.S. 499, 510 (1892); *InterFirst Bank of Abilene, N.A.* v. *FDIC,* 777 F.2d 1092, 1095–1096 (5th Cir. 1985); *FDIC* v. *Mademoiselle of California,* 379 F.2d 660, 663 (9th Cir. 1967).

[31] *See Ticonic Nat'l Bank* v. *Sprague,* 303 U.S. 406, 410–411 (1938); *Merrill* v. *Nat'l Bank of Jacksonville,* 173 U.S. 131, 146 (1899); *Scott* v. *Armstrong,* 146 U.S. 499, 510 (1892); *Bell* v. *Hanover Nat'l Bank,* 57 F. 821, 822 (C.C.S.D.N.Y. 1893).

[32] *Ticonic Nat'l Bank* v. *Sprague,* 303 U.S. 406, 410–411 (1938); *Bell* v. *Hanover Nat'l Bank,* 57 F. 821, 822 (C.C.S.D.N.Y. 1893).

[33] *Bell* v. *Hanover Nat'l Bank,* 57 F. 821, 822 (C.C.S.D.N.Y. 1893).

[34] *Merrill* v. *Nat'l Bank of Jacksonville,* 173 U.S. 131, 146 (1899).

Question 5. The OCC requests comment on whether there are other Federal statutes regarding specific types of claims that may be applicable to a receivership of an uninsured bank under the NBA and that would give certain claims a different priority, such as claims owed to the Federal government.

Proposed § 51.6 provides that all administrative expenses of the receiver for an uninsured bank will be paid out of the assets of the receivership before payment of claims against the receivership. This reflects the requirements in 12 U.S.C. 196. The proposed rule also states that receivership expenses would include pre-receivership and post-receivership obligations that the receiver determines are necessary and appropriate to facilitate the orderly liquidation or other resolution of the uninsured bank in receivership. To further illustrate the kinds of expenses that section 196 affords a first priority claim on the uninsured bank's receivership assets, proposed § 51.6 enumerates examples of such administrative expenses, such as wages and salaries of employees, expenses for professional services, contractual rent pursuant to an existing lease or rental agreement, and payments to third-party or affiliated service providers, when the receiver determines these expenses are of benefit to the receivership.

Proposed § 51.7 contains provisions describing the powers and duties of the receiver and the disposition of fiduciary and custodial accounts. As described in proposed § 51.7, the receiver would take over the assets and operation of the uninsured bank, take action to realize on debts owed to the uninsured bank, sell the property of the bank, and liquidate the assets of the uninsured bank for payment of claims against the receivership. Proposed § 51.7(a)(1)–(5) lists some of the major powers and duties for the receiver set out in 12 U.S.C. 192 and clarified by the courts, including taking possession of the books and records of the bank, collecting on debts and claims owed to the bank, selling or compromising bad or doubtful debts (with court approval), and selling the bank's real and personal property (also with court approval).

Proposed § 51.7(b) provides for the receiver to close the uninsured bank's fiduciary and custodial appointments, or transfer such accounts to a successor fiduciary or custodian under 12 CFR 9.16 or other applicable Federal law. The uninsured banks currently in existence focus on fiduciary and custodial services, so this function of the receiver would be of primary importance. This provision recognizes that the receiver's power to wind up the affairs of the uninsured bank in receivership, acting with court approval to make disposition of bank assets, should properly encompass the power to transfer fiduciary or custodial appointments and any associated assets in appropriate circumstances.

Transfer of fiduciary appointments may occur under the terms of the instrument creating the relationship, if it provides for transfer, or under a fiduciary transfer statute, if one is applicable. The OCC believes there are strong public policy interests in endeavoring to replace fiduciaries and custodians expeditiously, without an interruption in service to their customers, if transfer can be arranged to a qualified successor, maintaining the same duties and standards of care with respect to the customers that previously pertained to their accounts at the uninsured bank in receivership. The alternative, given that the uninsured bank must be wound down and cannot provide services in the future, is to stop managing and reinvesting the customer's assets, stop responding to directions to transfer or receive assets in custody, close the accounts, and seek instructions from the account holders or the courts regarding return of associated assets. For institutional customers, this is likely to cause significant interruption of the intricate machinery of their financial operations. For individuals, it can potentially result in loss of asset value in adverse markets, or loss of income due to foregone reinvestments.

Across the United States, there are disparate and often conflicting legal rules restricting or conditioning transfers of an appointment of a fiduciary for a beneficiary residing within the state. Depending on the geographic area across which the uninsured bank has established fiduciary relationships with its customers, and the standardization of its fiduciary account agreements or appointing instruments, it may be practicable for the receiver to transition an uninsured bank's fiduciary and custody accounts to a qualified successor through the mechanisms provided by applicable local law. On the other hand, if faced with dispersed customers, diverse account agreements or appointments of different vintage, or even the absence of an applicable law of transfer for customers in certain states, reliance on these methods may be so cumbersome as to effectively prevent accomplishment of the transfers in a timely way.

In order to address these potential problems, the OCC, relying on the support of existing case law, is including language in the proposed rule to make it clear that the uninsured bank receiver's power under 12 U.S.C. 192 to sell, with court approval, the real and personal property of the bank includes the power to transfer the bank's fiduciary accounts and related assets, subject to the approval of the court exercising jurisdiction over the receiver's efforts to transfer the bank's assets. The proposed rule is consistent with case law recognizing that a receiver for a national bank may properly arrange asset purchase and liability assumption transactions to move the business of a failed bank to a successor on an integrated basis, as part of the power to transfer assets, as well as analogous case law concerning the transfer of fiduciary and custodial assets by the FDIC, acting as receiver of failed insured depository institutions.[35]

Proposed § 51.7(c) incorporates, in general terms, the powers, duties, and responsibilities of receivers for national banks under the NBA and under judicial precedents determining the authorities and responsibilities of receivers for national banks. Examples of these powers include: (1) The authority to repudiate certain contracts, including: (a) Purely executory contracts, upon determining that the contracts would be unduly burdensome or unprofitable for the receivership estate,[36] (b) contracts that involve fraud or misrepresentation,[37] and (c) in limited cases, non-executory contracts that are contrary to public policy; [38] (2) the authority to recover fraudulent transfers; [39] and (3) the authority to enforce collection of notes from debtors and collateral, regardless of the existence of side arrangements that would otherwise defeat the collectability of such notes.[40]

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[35] *See NCNB Texas National Bank* v. *Cowden*, 895 F.2d 1488 (5th Cir. 1990) (holding that the FDIC, as receiver of insolvent bank, had authority to transfer fiduciary appointments to bridge bank prior to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

Proposed § 51.7(d) requires the receiver to make periodic reports to the OCC concerning the status and proceedings of the receivership.

Proposed § 51.8 contains provisions regarding the payment of dividends on claims against the uninsured bank and the distribution of any remaining proceeds to shareholders. This section provides that, after administrative expenses of the receivership have been paid, the OCC would make ratable dividends from available receivership funds based on the priority of claims in proposed § 51.5, for claims that have been proved to the OCC's satisfaction or adjudicated in a court of competent jurisdiction, as provided in 12 U.S.C. 194. The OCC would make payment of dividends, if any, periodically, at the discretion of the OCC, as the receiver liquidates the assets of the uninsured bank.

The proposed rule's inclusion of the "ratable dividend" requirement is designed to incorporate the associated standards about the proper application of this statutory directive, which the judiciary has articulated over the years. The ratable dividend requirement directs the OCC to make distributions on OCC-approved claims and judicial awards on an equal footing, determining the amount of each creditor's claim as it stands at the point of insolvency. As one example, a court's award of interest on an unpaid debt to the date of a judgment rendered in the plaintiff's favor after the receiver was appointed does not increase the amount of the plaintiff's claim for purposes of making ratable dividends. As another example, the ratable dividend requirement generally restricts claims against the bank receivership for debts that were not due and owing at the appointment of the receiver, and arose for the first time as a consequence of the appointment or a post-appointment event.

The OCC requests comment on alternatives to the proposed rule's approach to distributing dividends, under which the OCC would exercise its discretion under section 194 to determine the timing of the distributions on established claims. One alternative would be to refrain from paying any dividends until all claims have been submitted and validated, with final allowed claim amounts established. This approach presents the possibility that proven claims may be delayed for a significant amount of time pending more protracted resolution of other claims. For example, if there is ongoing litigation against the bank regarding a claim, this waiting period rule would mean no dividends would be made to any claimants, even those with well-established claims, until after the litigation is finally resolved.

Another option would be to allow ongoing dividends on proven claims, subject to the receiver's retaining a percentage of the funds on hand at the time of the distribution as a pool of dividends for catch-up distributions to a successful plaintiff later. The OCC believes it would be appropriate, under such an approach, for the rule to incorporate a mechanism to balance the interests of established claimants in current payment against the interests in future relief to others asserting more protracted claims. The OCC also has an interest in being able to seek termination of a receivership after an appropriate period, in light of the assets that are realistically available, the prospects of success by plaintiffs asserting additional claims, and similar factors. Accordingly, the rule might commit the OCC to reserve a minimum of 12 percent of funds on hand at the time of distribution during the first year a distribution is made, and reduce this required minimum reserve to 8 percent 12 months later, 4 percent after the next 12 months, and eliminate the reserve requirement beyond that.

Question 6. The OCC invites comment on these alternatives for making ratable distributions in accordance with section 194.

Proposed § 51.8(a)(2) recognizes the basic legal premise under the NBA receivership provisions and judicial interpretations thereof that any dividend payments to creditors and other claimants of an uninsured bank will be made solely from receivership funds, if any, paid to the OCC by the receiver after payment of the expenses of the receiver. This provision is also consistent with the established dichotomy of the OCC's supervisory and receivership capacities in the NBA, as discussed earlier.

Proposed § 51.8(b) similarly recognizes that assets held by an uninsured bank in a fiduciary or custodial capacity, as designated on the bank's books and records, are not part of the bank's general assets and liabilities held in connection with its other business, and will not be considered a source for payment for unrelated claims of creditors and other claimants. This provision is intended to make clear that the receiver will segregate identified fiduciary and custodial assets and either transfer those assets to other fiduciaries or custodians as described in connection with proposed § 51.7(b), or close the accounts and endeavor to make the associated assets available to the accountholders or their representatives through other means.

Proposed § 51.8(d) provides that, after all administrative expenses and claims have been paid in full, any remaining proceeds would be paid to shareholders in proportion to their stock ownership, also as provided in 12 U.S.C. 194.

Proposed § 51.9 contains provisions for termination of receiverships in which there are assets remaining after all administrative expenses and all claims had been paid. This is the scenario addressed by 12 U.S.C. 197. In such a case, section 197 requires the Comptroller to call a meeting of the shareholders of the bank at which the shareholders would decide whether to continue oversight by the Comptroller, or whether to end the receivership and appoint a liquidating agent to continue the liquidation of the remaining assets, under the direction of the board of directors and shareholders, as in a liquidation that had commenced under 12 U.S.C. 181.

There may be other circumstances under which termination would take place, such as when there are no receivership assets remaining after completion of receivership activities. Under this scenario, the receiver for an uninsured bank has liquidated all of the bank's assets, closed or transferred all fiduciary accounts to a successor fiduciary, paid all administrative expenses, and either paid creditor claims in full and distributed the remaining proceeds to shareholders, as provided in § 51.8(c), or made ratable dividends of all remaining proceeds to creditors as provided in § 51.8(a), but no additional assets remain in the estate. Under these circumstances, the provisions in 12 U.S.C. 197 for termination would not apply.

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[36] *Bank One Texas* v. *Prudential Life Ins. Co.*, 878 F. Supp. 943, 964–66 (N.D. Tex. 1995).

[37] A. Corbin, *Corbin on Contracts* § 228 at 320 (1952) (addressing contracts voidable for fraud, duress, or mistake).

[38] *Cf. Fidelity Deposit Co. of Md.* v. *Conner*, 973 F.2d 1236, 1241 (5th Cir. 1992).

[39] *See Peters* v. *Bain*, 133 U.S. 670 (1890) (applying state substantive law to determine whether to void a transfer); *Rogers* v. *Marchant*, 91 F.2d 660, 663 (4th Cir. 1937).

[40] *D'Oench, Duhme & Co., Inc.* v. *FDIC*, 315 U.S. 447, 458 (1942). A. Corbin, *Corbin on Contracts*, § 228 at 320 (1952) (addressing contracts voidable for fraud duress or mistake).

Question 7. The OCC requests comment on whether the rule should provide termination procedures for receiverships that are outside the circumstances addressed in 12 U.S.C. 197.

V. Regulatory Analysis

A. Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), the OCC may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The proposed rule contains no information collection requirements under the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include commercial banks and savings institutions, and trust companies, with assets of $550 million or less and $38.5 million or less, respectively) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises approximately 1,032 small entities. The scope of the proposed rule extends to uninsured banks. The maximum number of OCC-supervised small uninsured banks that could be subject to the receivership framework described in the proposal is approximately 18.[41] Accordingly, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). As detailed in the **SUPPLEMENTARY INFORMATION**, the OCC currently supervises 52 uninsured banks, all of which are uninsured trust banks, and has not appointed a receiver for an uninsured bank since 1933. Unlike commercial and consumer banks and savings associations, which generally face credit and liquidity risks, national trust banks primarily face operational, reputational, and strategic risks. While any of these risks could result in the precipitous failure of a bank or savings association, from a historical perspective, trust banks have been more likely to decline into a weakened condition, allowing the OCC and the institution the time needed to find other solutions for rehabilitating the institution or to successfully resolve the institution without the need to appoint a receiver. Given that we believe the OCC is unlikely to place an uninsured trust bank into receivership, the OCC concludes that the proposed rule will not result in an expenditure of $100 million or more by state, local, and tribal governments, or by the private sector, in any one year.

List of Subjects in 12 CFR Part 51

Administrative practice and procedure, Banks, Banking, National banks, Procedural rules, Receiverships, Authority, and Issuance.

■ For the reasons set forth in the preamble and under the authority of 12 U.S.C. 16, 93a, 191–200, 481, 482, 1831c, and 1867 the Office of the Comptroller of the Currency proposes to add a new part 51 to chapter I of title 12, Code of Federal Regulations as follows:

PART 51—RECEIVERSHIPS FOR UNINSURED NATIONAL BANKS

Sec.
51.1 Purpose and scope.
51.2 Appointment of receiver.
51.3 Notice of appointment of receiver.
51.4 Claims.
51.5 Order of priorities.
51.6 Administrative expenses of receiver.
51.7 Powers and duties of receiver; disposition of fiduciary and custodial assets.
51.8 Payment of claims and dividends to shareholders.
51.9 Termination of receivership.

Authority: 12 U.S.C. 16, 93a, 191–200, 481, 482, 1831c, and 1867.

§ 51.1 Purpose and scope.

(a) *Purpose.* This part sets out procedures for receiverships of national banks conducted by the Office of the Comptroller of the Currency (OCC) under the receivership provisions of the National Bank Act (NBA). These receivership provisions apply to national banks that are not insured by the Federal Deposit Insurance Corporation (FDIC).

(b) *Scope.* This part applies to the appointment of a receiver for uninsured national banks (uninsured banks) and the operation of a receivership after appointment of a receiver for an uninsured bank under 12 U.S.C. 191.[1]

§ 51.2 Appointment of receiver.

(a) *In general.* The Comptroller of the Currency (Comptroller) may appoint any person, including the OCC or another government agency, as receiver for an uninsured bank. The receiver performs its duties under the direction of the Comptroller and serves at the will of the Comptroller. The Comptroller may require the receiver to post a bond or other security. The receiver, with the approval of the Comptroller, may employ such staff and enter into contracts for professional services as are necessary to carry out the receivership.

(b) *Grounds for appointment.* The Comptroller may appoint a receiver for an uninsured bank based on any of the grounds specified in 12 U.S.C. 191(a).

(c) *Judicial review.* If the Comptroller appoints a receiver for an uninsured bank, the bank may seek judicial review of the appointment as provided in 12 U.S.C. 191(b).

§ 51.3 Notice of appointment of receiver.

Upon appointment of a receiver for an uninsured bank, the OCC will provide notice to the public of the receivership, including by publication in a newspaper of general circulation for three consecutive months. The notice of the receivership will provide instructions for creditors and other claimants seeking to submit claims with the receiver for the uninsured bank.

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[41] Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an institution we supervise as a small entity. We used December 31, 2015, to determine size because a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *See* footnote 8 of the U.S. SBA's *Table of Size Standards.*

[1] This part does not apply to receiverships for uninsured Federal branches or uninsured Federal agencies.

§ 51.4 Claims.

(a) *Submission of claims for consideration by the OCC.* (1) Persons who have claims against the receivership for an uninsured bank may present such claims, along with supporting documentation, for consideration by the OCC. The OCC will determine the validity and approve the amounts of such claims.

(2) The OCC will establish a date by which any person seeking to present a claim against the uninsured bank for consideration by the OCC must present their claim for determination. The deadline for filing such claims will not be less than 30 days after the end of the three-month notice period in § 51.3.

(3) The OCC will allow any claim against the uninsured bank received on or before the deadline for presenting claims if such claim is established to the OCC's satisfaction by the information on the uninsured bank's books and records or otherwise submitted. The OCC may disallow any portion of any claim by a creditor or claim of a security, preference, set-off, or priority which is not established to the satisfaction of the OCC.

(b) *Submission of claims to a court.* Persons with claims against an uninsured bank in receivership may present their claims to a court of competent jurisdiction for adjudication. Such persons must submit a copy of any final judgment received from the court to the OCC, to participate in ratable dividends along with other proved claims.

(c) *Right of set-off.* If a person with a claim against an uninsured bank in receivership also has an obligation owed to the bank, the claim and obligation will be set off against each other and only the net balance remaining after set-off shall be considered as a claim, provided such set-off is otherwise legally valid.

§ 51.5 Order of priorities.

The OCC will pay receivership expenses and proved claims against the uninsured bank in receivership in the following order of priority:

(a) Administrative expenses of the receiver;

(b) Unsecured creditors of the uninsured bank, including secured creditors to the extent their claim exceeds their valid and enforceable security interest;

(c) Creditors of the uninsured bank, if any, whose claims are subordinated to general creditor claims; and

(d) Shareholders of the uninsured bank.

§ 51.6 Administrative expenses of receiver.

(a) *Priority of administrative expenses.* All administrative expenses of the receiver for an uninsured bank shall be paid out of the assets of the bank in receivership before payment of claims against the receivership.

(b) *Scope of administrative expenses.* Administrative expenses of the receiver for an uninsured bank include those expenses incurred by the receiver in maintaining banking operations during the receivership, to preserve assets of the uninsured bank, while liquidating or otherwise resolving the affairs of the uninsured bank. Such expenses include pre-receivership and post-receivership obligations that the receiver determines are necessary and appropriate to facilitate the orderly liquidation or other resolution of the uninsured bank in receivership.

(c) *Types of administrative expenses.* Administrative expenses for the receiver of an uninsured bank include:

(1) Salaries, costs, and other expenses of the receiver and its staff, and costs of contracts entered into by the receiver for professional services relating to performing receivership duties; and

(2) Expenses necessary for the operation of the uninsured bank, including wages and salaries of employees, expenses for professional services, contractual rent pursuant to an existing lease or rental agreement, and payments to third-party or affiliated service providers, that in the opinion of the receiver are of benefit to the receivership, until the date the receiver repudiates, terminates, cancels, or otherwise discontinues the applicable contract.

§ 51.7 Powers and duties of receiver; disposition of fiduciary and custodial accounts.

(a) *Marshalling of assets.* In resolving the affairs of an uninsured bank in receivership, the receiver:

(1) Takes possession of the books, records and other property and assets of the uninsured bank, including the value of collateral pledged by the uninsured bank to the extent it exceeds valid and enforceable security interests of a claimant;

(2) Collects all debts, dues and claims belonging to the uninsured bank, including claims remaining after set-off;

(3) Sells or compromises all bad or doubtful debts, subject to approval by a court of competent jurisdiction;

(4) Sells the real and personal property of the uninsured bank, subject to approval by a court of competent jurisdiction, on such terms as the court shall direct; and

(5) Deposits all receivership funds collected from the liquidation of the uninsured bank in an account designated by the OCC.

(b) *Disposition of fiduciary and custodial accounts.* The receiver for an uninsured bank closes the bank's fiduciary and custodial appointments and accounts or transfers some or all of such accounts to successor fiduciaries and custodians, in accordance with 12 CFR 9.16, and other applicable Federal law.

(c) *Other powers.* The receiver for an uninsured bank may exercise other rights, privileges, and powers authorized for receivers of national banks under the NBA and the common law of receiverships as applied by the courts to receiverships of national banks conducted under the NBA.

(d) *Reports to OCC.* The receiver for an uninsured bank shall make periodic reports to the OCC on the status and proceedings of the receivership.

(e) *Receiver subject to removal; modification of fees.* (1) The Comptroller may remove and replace the receiver for an uninsured bank if, in the Comptroller's discretion, the receiver is not conducting the receivership in accordance with applicable Federal laws or regulations or fails to comply with decisions of the Comptroller with respect to the conduct of the receivership or claims against the receivership.

(2) The Comptroller may reduce the fees of the receiver for an uninsured bank if, in the Comptroller's discretion, the Comptroller finds the performance of the receiver to be deficient, or the fees of the receiver to be excessive, unreasonable, or beyond the scope of the work assigned to the receiver.

§ 51.8 Payment of claims and dividends to shareholders.

(a) *Claims.* (1) After the administrative expenses of the receivership have been paid, the OCC shall make ratable dividends from time to time of available receivership funds according to the priority described in § 51.5, based on the claims that have been proved to the OCC's satisfaction or adjudicated in a court of competent jurisdiction.

(2) Dividend payments to creditors and other claimants of an uninsured bank will be made solely from receivership funds, if any, paid to the OCC by the receiver after payment of the expenses of the receiver.

(b) *Fiduciary and custodial assets.* Assets held by an uninsured bank in a fiduciary or custodial capacity, as designated on the bank's books and records, will not be considered as part of the bank's general assets and liabilities held in connection with its other business, and will not be considered a source for payment of unrelated claims of creditors and other claimants.

(c) *Timing of dividends.* The payment of dividends, if any, under paragraph (a) of this section, on proved or adjudicated claims will be made periodically, at the discretion of the OCC, as the receiver liquidates the assets of the uninsured bank.

(d) *Distribution to shareholders.* After all administrative expenses of the receiver and proved claims of creditors of the uninsured bank have been paid in full, to the extent there are receivership assets to make such payments, any remaining proceeds shall be paid to the shareholders, or their legal representatives, in proportion to their stock ownership.

§ 51.9 Termination of receivership.

If there are assets remaining after full payment of the expenses of the receiver and all claims of creditors for an uninsured bank and all fiduciary accounts of the bank have been closed or transferred to a successor fiduciary and fiduciary powers surrendered, the Comptroller shall call a meeting of the shareholders of the uninsured bank, as provided in 12 U.S.C. 197, for the shareholders to decide the manner in which the liquidation will continue. The liquidation may continue by:

(a) Continuing the receivership of the uninsured bank under the direction of the Comptroller; or

(b) Ending the receivership and oversight by the Comptroller and replacing the receiver with a liquidating agent to proceed to liquidate the remaining assets of the uninsured bank for the benefit of the shareholders, as set out in 12 U.S.C. 197.

Dated: September 2, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–21846 Filed 9–12–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9120; Directorate Identifier 2016–CE–024–AD]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. This proposed AD was prompted by corrosion and stress corrosion cracking of the pitch trim actuator upper attach fittings of the horizontal stabilizer front spar. This proposed AD would require repetitive inspections of the pitch trim actuator upper attach fittings for corrosion and/or cracking in the bolt holes and the web/flange radius with replacement of fittings as necessary. We are proposing this AD to prevent jamming and/or loss of control of the horizontal stabilizer, which could result in partial or complete loss of airplane pitch control.

DATES: We must receive comments on this proposed AD by October 28, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9120; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9120; Directorate Identifier 2016–CE–024–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of multiple SA226 and SA227 airplanes with corrosion and/or stress corrosion cracks in the pitch trim actuator upper attach fittings of the horizontal stabilizer front spar. This condition, if not corrected, could result in jamming and/or loss of control of the horizontal stabilizer with consequent partial or complete loss of airplane pitch control.

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace LLC Service Bulletin (SB) 226–27–081 R1, M7 Aerospace LLC SB 227–27–061 R1, and M7 Aerospace LLC SB CC7–27–033 R1, all Issued: April 13, 2016 and Revised: June 27, 2016. The service information describes procedures for detailed visual, liquid penetrant, ultrasound and high frequency eddy current inspections of the pitch trim actuator upper attach fittings for corrosion and cracking in the bolt holes and the web/flange radius, and replacement if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 300 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect pitch trim actuator upper attach fittings.	16 work-hours × $85 per hour = $1,360	Not Applicable	$1,360	$408,000

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace 2 fittings	8 work-hours × $85 per hour = $680	$4,900	$5,580

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

M7 Aerospace LLC: Docket No. FAA–2016–9120; Directorate Identifier 2016–CE–024–AD.

(a) Comments Due Date

We must receive comments by October 28, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by corrosion and stress corrosion cracking of the pitch trim actuator upper attach fittings of the horizontal stabilizer front spar. We are issuing this AD to prevent jamming and/or loss of control of the horizontal stabilizer, which could result in partial or complete loss of airplane pitch control.

(f) Compliance

Comply with paragraphs (g)(1) and (2) of this AD using the following service bulletins and within the compliance times specified, unless already done:

(1) *For Models SA226–AT, SA226–T, SA226–T(B), and SA226–TC:* M7 Aerospace LLC Service Bulletin (SB) 226–27–081 R1, Issued: April 13, 2016 and Revised: June 27, 2016; or

(2) *For Models SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), and SA227–TT:* M7 Aerospace LLC SB 227–27–061 R1, Issued: April 13, 2016 and Revised: June 27, 2016; or

(3) *For Models SA227–CC and SA227–DC (C–26B):* M7 Aerospace LLC SB CC7–27–033 R1, Issued: April 13, 2016 and Revised: June 27, 2016.

(g) Actions

(1) Within the next 600 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed every 5,000 hours TIS or 5 years, whichever occurs first, perform the inspection of the pitch trim actuator upper attach fittings following section 2.A. and return to service following section 2.C. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (2), or (3) of this AD, as applicable.

(2) If any corrosion or cracks are found as a result of any inspection in paragraph (g)(1) of this AD, before further flight, replace the fitting following section 2.B. and return to service following section 2.C. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (2), or (3) of this AD, as applicable.

(h) Credit for Actions Accomplished in Accordance With Previous Service Information

This proposed AD allows credit for inspection or replacement of the pitch trim actuator upper attach fittings required in paragraph (g)(1) and (2) of the AD, if done before the effective date of this AD, following the procedures in the Accomplishment Instructions of the applicable service information listed in paragraphs (h)(1) through (3) of this AD:

(1) *For Models SA226–AT, SA226–T, SA226–T(B), and SA226–TC:* M7 Aerospace LLC Service Bulletin (SB) 226–27–081, Issued: April 13, 2016; or

(2) *For Models SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), and SA227–TT:* M7 Aerospace LLC SB 227–27–061, Issued: April 13, 2016; or

(3) *For Models SA227–CC and SA227–DC (C–26B):* M7 Aerospace LLC SB CC7–27–033, Issued: April 13, 2016.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(2) For service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on September 1, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–21704 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–8927; Airspace Docket No. 15–ANM–24]

RIN 2120–AA66

Proposed Establishment of Restricted Area R–2603; Fort Carson, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish restricted area R–2603 within the existing Fort Carson, CO, Pinon Canyon Maneuver Site (PCMS), near Trinidad, CO. The U.S. Army requires additional restricted airspace because the restricted area ranges at Fort Carson are not large enough to meet all training requirements. The proposed R–2603 would provide increased ground-to-air, air-to-ground, and air-to-air battle space to increase training capacity and relieve training congestion at Fort Carson.

DATES: Comments must be received on or before October 28, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–8927 and Airspace Docket No. 15–ANM–24, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* Comments on environmental and land use aspects should be directed to: Fort Carson NEPA Program Manager, Directorate of Public Works, Environmental Division, 1626 Evans Street, Building 12191, Fort Carson, CO 80913–4362. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish a restricted area at Fort Carson, CO, to enhance aviation safety and accommodate essential Army training requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2016–8927 and Airspace Docket No. 15–ANM–24) and be submitted in triplicate to the Docket Office at the address listed above. You may also submit comments through the Internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA

Docket No. FAA–2016–8927 and Airspace Docket No. 15–ANM–24." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Docket Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98057.

Background

To conduct realistic and coordinated large-scale training that integrate ground and air resources, the U.S. Army must maintain large maneuver and training areas of varying characteristics and complex terrain. As the overseas deployment cycle slows, soldiers must now train more often at home station in order to sustain their combat skills. As a result, competition among units for training time and space at Fort Carson, CO, will sharply increase. Fort Carson provides training for up to ten Army Brigades per year. In addition, Fort Carson conducts training with Reserve, National Guard, joint services, foreign military services, special operations forces and other Federal agencies. The current training areas and ranges at Fort Carson do not have the capacity to accommodate all current and evolving large-scale, integrated training requirements. To address this training shortfall, the Army must take advantage of the larger space and greater training capacity available at the existing Pinon Canyon Maneuver Site (PCMS), near Trinidad, CO. The PCMS is a military training site for Fort Carson, CO. The proposed designation of restricted area R–2603, within the PCMS, would provide the increased space needed to conduct various activities including force-on-force maneuver training, lasers and hazardous ground-to-air, air-to-ground and air-to-air operations.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to establish a new restricted area, designated R–2603, extending from the surface to but not including 10,000 feet MSL, within the existing Fort Carson PCMS. The proposed restricted area would contain various hazardous activities including, but not limited to: Electronic jamming; pyrotechnic activities; airborne and ground-based lasers; hazardous air-to-ground, ground-to-air and air-to-air activities involving fixed-wing and rotary-wing aircraft; and night-time lights-out flight maneuvers. Additionally, only "non-dud" producing munitions (40 millimeter and below) would be fired in the proposed restricted area.

R–2603 would be activated for specific times as announced by issuance of a Notice to Airmen (NOTAM). It is estimated that the area would be required to support approximately five training cycles per year with the longest duration of each cycle being approximately four to five weeks. The area would be activated only when needed to support operations that pose a hazard to aviation.

The U.S. Army requested this action to provide additional restricted airspace to resolve a training capacity shortfall at Fort Carson, CO.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.26 Colorado (Amended)

■ 2. § 73.26 is amended as follows:

* * * * *

R–2603 Fort Carson, CO [New]

Boundaries. Beginning at lat. 37°22′30″ N., long. 104°04′47″ W.; to lat. 37°21′15″ N., long. 104°02′35″ W.; to lat. 37°21′10″ N., long. 103°54′41″ W.; to lat. 37°32′46″ N., long. 103°42′46″ W.; to lat. 37°38′33″ N., long. 103°35′11″ W.; to lat. 37°38′32″ N., long. 103°48′43″ W.; to lat. 37°38′10″ N., long. 103°48′47″ W.; to lat. 37°35′57″ N., long. 103°54′40″ W.; to lat. 37°35′59″ N., long. 103°57′50″ W.; to lat. 37°33′21″ N., long. 103°57′55″ W.; to lat. 37°32′27″ N., long. 104°02′15″ W.; to lat. 37°32′27″ N., long. 104°06′32″ W.; thence to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. By NOTAM.

Controlling agency. FAA, Denver ARTCC.

Using agency. U.S. Army, Commander, Fort Carson, CO.

Issued in Washington, DC, on September 6, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–21938 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0393; FRL–9952–08–Region 9]

Approval of California Air Plan Revisions, Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) at Owens Lake, CA. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 13, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0393 at *http://www.regulations.gov,* or via email to Andrew Steckel, Rulemaking Office Chief at *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
GBUAPCD	433	Control of Particulate Emissions at Owens Lake	04/13/16	06/09/16

On July 6, 2016, the EPA determined that the submittal for GBUAPCD Rule 433 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 433 in the SIP.

C. What is the purpose of the submitted rule?

PM, including PM equal to or less than 10 microns in diameter (PM_{10}), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions, including PM_{10} emissions. GBUAPCD Rule 433 establishes PM_{10} emission control requirements at the dry Owens Lake bed in the Owens Valley Planning Area (OVPA). The rule defines Best Available Control Measures (BACM) and establishes the temporal and geographic requirements of these controls at Owens Lake, with the goal of reducing PM_{10} emissions from the dry lake bed to attain the 24-hour PM_{10} National Ambient Air Quality Standard (NAAQS) in 2017. For example, Rule 433 requires the application of controls such as gravel blankets, managed vegetation, or shallow flooding to areas of the dry Owens Lake bed that have contributed to violations of the NAAQS. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must implement BACM, including Best Available Control Technology (BACT), in areas classified as serious nonattainment (see CAA section 189(b)(1)(B)) for PM_{10}. The GBUAPCD regulates the OVPA, which is a PM_{10} nonattainment area classified as serious. A BACM and BACT evaluation is generally performed in context of a broader plan.[1]

The dry Owens Lake bed is the predominant source of PM_{10} emissions in the OVPA.[2] Rule 433 requires the City of Los Angeles to implement a number of PM_{10} control measures, including shallow flooding, managed vegetation, installation of gravel blankets, application of brine, or surface roughening (tillage) over a large portion of the dry Owens Lake bed. The control measures required by Rule 433 will result in a substantial reduction of PM_{10} emissions in the OVPA from the Owens Lake bed.[3]

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[1] CARB submitted the GBUAPCD's 2016 OVPA PM_{10} SIP on June 9, 2016. We intend to evaluate and propose action on the 2016 OVPA PM_{10} SIP, including BACM, in a separate action in the near future.

[2] OVPA 2016 SIP BACM Assessment at p. 1.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).
5. "PM_{10} Guideline Document," EPA 452/R–93–008, April 1993.
6. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2–92–004, September 1992.

B. Does the rule meet the evaluation criteria?

The PM_{10} emission controls and other requirements in Rule 433 are clear and adequately enforceable. The requirements clearly strengthen the SIP and are consistent with CAA sections 110(l) and 193. We intend to address BACM for this area in the near future when we act on the OVPA 2016 SIP. Therefore, we find that Rule 433 is consistent with the relevant policy and guidance regarding enforceability and does not result in a SIP relaxation. The TSD has more information on our evaluation.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until October 13, 2016. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the GBUAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 24, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–21872 Filed 9–12–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–BG15

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 47 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) to NMFS for review. If approved, Amendment 47 would exempt eastern *Chionoecetes bairdi* Tanner (EBT) and western *C. bairdi*

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[3] OVPA 2016 SIP at p. 87 and Figure 10–1.

Tanner (WBT) crab that is custom processed at a facility through contractual arrangements with the processing facility owners from being applied against the individual processing quota (IPQ) use cap of the processing facility owners. Amendment 47 would modify the Crab FMP to allow all of the EBT and WBT Class A individual fishing quota crab to be processed at the facilities currently processing EBT and WBT crab and would have significant, positive economic effects on the fishermen, processors, and communities that participate in the EBT and WBT fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Crab FMP, and other applicable laws.

DATES: Submit comments on or before November 14, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0081, by any one of the following methods.

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0081,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the "Analysis") and the Categorical Exclusion prepared for Amendment 47 may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

The Environmental Impact Statement, RIR, Final Regulatory Flexibility Analysis, and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 47 to the Crab FMP is available for public review and comment.

NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

The Crab Rationalization Program (Program) was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Under the Program, NMFS issued four types of QS: Catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; captains and crew on board catcher/processor vessels were issued catcher/processor crew QS; and captains and crew on board catcher vessels were issued catcher vessel crew QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (*i.e.,* CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS. To address these concerns, the Program limits the amount of QS that a person can hold (*i.e.,* own), the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In most of the nine BSAI crab fisheries under the Program, including the Tanner crab fisheries, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. No person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS (see Section 2.5.2 of the Analysis). Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS. The rationale for the IPQ use caps is described in the Program EIS and the final rule implementing the Program (70 FR 10174, March 2, 2005).

Under § 680.7(a)(7), any IPQ crab that is "custom processed" at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder does not have an ownership interest in that processing facility or is not otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder's specifications.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed.

Table 2–5 in Section 2.6.1 of the Analysis shows that during the 2006/2007 crab fishing year, there were six processing facilities owned by five unaffiliated processors receiving EBT Class A IFQ crab and there were five processing facilities owned by four unaffiliated processors receiving WBT Class A IFQ crab. Since then, there has been consolidation in the BSAI crab processing sector, thus reducing the number of processing facilities that are unaffiliated with one another. This consolidation has occurred through the merger of two companies and the recent exit of a company from the fishery. Additionally, PQS has been purchased by entities that do not own or operate processing facilities. As Section 2.6 of the Analysis describes (see **ADDRESSES**), for the first year since the start of the Program, there were only three unique unaffiliated persons (processors) who received EBT and WBT IPQ crab at their facilities during the 2015/2016 crab fishing year. These three processors are the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. Information in section 2.6 of the Analysis explains that these three processors also own and operate all of the facilities that processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

The Council recognized that consolidation within the Tanner crab processing sector has constrained the ability of the processing sector to process all of the EBT and WBT Class A IFQ crab without exceeding the IPQ use caps. The Council recognized that without additional unique and unaffiliated processing facilities entering the Tanner crab processing sector for the 2016/2017 crab fishing year or beyond, there is a significant risk that the portion of the Tanner crab allocation in excess of the caps would not be processed. Without the ability to have all EBT and WBT Class A IFQ processed, that portion of the Tanner crab allocation in excess of the caps would likely go unharvested because sufficient processing facilities do not exist in the Bering Sea region.

In June 2016, the Council recommended Amendment 47 to the FMP. This proposed action would add EBT and WBT IPQ crab to the list of BSAI crab fisheries receiving a custom processing arrangement exemption under Chapter 11 of the FMP in the *Clarifications and Expressions of Council Intent* section. If approved, Amendment 47 would exempt EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. This action would allow all EBT and WBT IPQ crab received under custom processing arrangements at the facilities owned by the three existing EBT and WBT processors (Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods) to not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption would allow these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries.

The anticipated effects of this proposed action include allowing the full processing of all EBT and WBT Class A IFQ crab and the associated economic and social benefits of that processing activity for harvesters, the existing Tanner crab processors, and the communities where processing facilities are located. These communities include Akutan, Dutch Harbor/Unalaska, King Cove, and Saint Paul. The proposed rule would allow all of the Tanner crab Class A IFQ to be harvested and processed by existing processors and thus avoid the adverse economic and social impacts created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully processed. Ten percent of the EBT and WBT Class A IFQ crab represents approximately $3.4 million in ex-vessel value and $ 4.95 million in first wholesale value based on estimated ex-vessel and first wholesale values of EBT and WBT crab in the 2015/2016 crab fishing year (see Section 2.9 of the Analysis for additional detail).

The Council and NMFS considered whether Amendment 47 could result in further consolidation of Tanner crab processing to fewer facilities than currently operating. Under Amendment 47, there would be no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or right of first refusal provisions, there would be no regulatory limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility. However, further consolidation is not anticipated as a result of this action because the existing processing companies also have substantial holdings of PQS in the EBT and WBT fisheries, and it would be more economical for them to process the PQS they hold to help maintain a consistent amount of crab available for processing at the facility rather than create custom processing arrangements with other companies.

Public comments are solicited on proposed Amendment 47 to the Crab FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 47, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 47 to be considered in the approval/disapproval decision on Amendment 47. All comments received by the end of the comment period on Amendment 47, whether specifically directed to the amendment or the proposed rule will be considered in the amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21824 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 177
Tuesday, September 13, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern New Mexico Resource Advisory Committee (RAC) will meet in Socorro, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/gila/workingtogether/advisorycommittees.*

DATES: The meeting will be held September 27, 2016, at 8:30 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under *For Further Information Contact.*

ADDRESSES: The meeting will be held at the Socorro County Annex Building, 198 Neel Avenue, Socorro, New Mexico.

Written comments may be submitted as described under *Supplementary Information.* All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Gila National Forest Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julia Faith Rivera, RAC Coordinator, by phone at 575–388–8212 or via email at *jfrivera@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend funding of project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 19, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Julia Faith Rivera, RAC Coordinator, 3005 E. Camino del Bosque, Silver City, New Mexico 88061; by email to *jfrivera@fs.fed.us,* or via facsimile to 575–388–8204.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled *For Further Information Contact.* All reasonable accommodation requests are managed on a case by case basis.

Dated: September 7, 2016.

Tracy Weber,

Acting Forest Supervisor, Gila National Forest.

[FR Doc. 2016–21932 Filed 9–12–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for the Delta Health Care Services Grant Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2016 applications for the Delta Health Care Services Grant (DHCS) Program as authorized by the Consolidated Appropriations Act of 2016. Approximately $4,385,600.00 is available to be competitively awarded. The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions and economic development entities in the Delta Region. The Agency is encouraging applications that direct grants to projects based in or serving census tracts with poverty rates greater than or equal to 20 percent. This emphasis will support Rural Development's (RD) mission of improving the quality of life for Rural Americans and its commitment to directing resources to those who most need them.

DATES: You must submit completed applications for grants according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than November 14, 2016
- Electronic copies must be received by November 7, 2016. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You should contact your USDA Rural Development State Office (State Office) if you have questions about eligibility or submission requirements. You are encouraged to contact your State Office well in advance of the application deadline to discuss your project and to ask any questions regarding the application process. A list of State Office contacts can be found at *http://www.rd.usda.gov/contact-us/state-offices.*

A supplementary application guide has also been created for your assistance. You may obtain the application guide and materials for this Notice in the following ways:

- Through the Internet at the RBS Cooperative Programs Web site: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*
- By requesting the application guide and materials from your local State Office. A list of State Office contacts can be found at *http://www.rd.usda.gov/contact-us/state-offices.*

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7960/TDD (318) 473–7655.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321/TDD (573) 876–9480.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1321.

You must submit either:

- A complete paper application to the State Office located in the State where the project will primarily take place, *http://www.rd.usda.gov/contact-us/state-offices* (see list above), or
- A complete electronic grant application at *http://www.grants.gov/* (*Grants.gov*). Please review the *Grants.gov* Web site at *http://grants.gov/applicants/organization_registration.jsp,* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the application deadline.

FOR FURTHER INFORMATION CONTACT: Grants Division, Cooperative Programs, Rural Business-Cooperative Programs, 1400 Independence Ave. SW., STOP 3253, Washington, DC 20250–3253; or call (202) 690–1374.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: USDA Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial funding announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Dates: You must submit your complete application by November 14, 2016 or it will not be considered for funding. Electronic copies must be received by *www.grants.gov* no later than midnight Eastern time November 7, 2016 or it will not be considered for funding.

Executive Order (EO) 13175 Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on RD in the development of regulatory policies that have tribal implications or preempt tribal laws. RD has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@wdc.usda.gov* or (720) 544–2911.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency conducted an analysis to determine the number of applications the Agency estimates that it will receive under the Delta Health Care Services Grant Program. It was determined that the estimated number of applications was fewer than nine and in accordance with 5 CFR 1320, thus no OMB approval is necessary at this time.

A. Program Description

This Notice announces the availability of funds for the DHCS grant program, which is authorized under Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u). The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a competitive basis. The maximum award amount per grant is $1,000,000.

Definitions

The terms and conditions provided in this Notice are applicable to this Notice only. In addition, the term "you" referenced throughout this Notice should be understood to mean the applicant and the terms "we," "us," and "our" should be understood to mean Rural Business-Cooperative Services, Rural Development, USDA.

Academic Health and Research Institute means one of the following:

- A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health), and one or more owned or affiliated teaching hospitals or health systems; or
- A health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research exclusively for scientific or educational purposes.

Conflict of Interest means a situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of conflict of interest occurs when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium means a group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research

Institutes, and/or Economic Development Entities located in the Delta Region that have at least one year of prior experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal government.

Delta Region means the 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity means any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health System means the complete network of agencies, facilities, and all providers of health care to meet the health needs of a specific geographical area or target populations.

Institution of Higher Education means either a postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization means any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project means all activities to be funded by the Delta Health Care Service Grant.

Project Funds means grant funds requested plus any other contributions to the proposed project.

Rural and rural area means any area of a State:

- Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and
- The contiguous and adjacent urbanized area,
- Urbanized areas that are rural in character as defined by 7 U.S.C. 1991 (a) (13), as amended by Section 6018 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (June 18, 2008).
- For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State means each of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

B. Federal Award Information

Type of Award: Grant.

Total Funding for DHCS: $4,385,600.00.

Maximum DHCS Award: $1,000,000.

Minimum DHCS Award: $50,000.

Project Period: Up to 24 months.

Anticipated Award Date: September 30, 2016.

C. Eligibility Information

Applicants must meet all of the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted.

1. Eligible Applicants

Grants funded through DHCS may be made to a Consortium as defined in Paragraph A of this Notice. Consortiums are eligible to receive funding through this Notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal government.

The lead entity is the recipient (see 2 CFR 200.86) of the DHCS grant funds and accountable for monitoring and reporting on the project performance and financial management of the grant. In addition, the lead entity (recipient) is responsible for subrecipient monitoring and management in accordance with 2 CFR 200.330 and 200.331, respectively. The remaining consortium members are subrecipients (see 2 CFR 200.93). They may receive subawards (see 2 CFR 200.94) from the recipient and are responsible for monitoring and reporting the project performance and financial management of their subaward to the recipient.

(a) An applicant is ineligible if they do not submit "Evidence of Eligibility" and "Consortium Agreements" as described in Section D.2. of this Notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the Credit Alert Interactive Voice Response System (CAIVRS) to verify this.

(c) Sections 743, 744, 745, and 746 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) apply. Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Consolidated Appropriations Act of 2016 (Pub. L. 114–113), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. In addition, none of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Additionally, no funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6.

(e) Applications will be deemed ineligible if the application is not complete in accordance with the requirements stated in Section C.3.g.

2. Cost Sharing or Matching

Matching funds are not required. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the project budget. Examples of acceptable documentation include: A signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. However, if you have a contract to provide services in place at the time you submit your application, you can verify the amount of the contract as matching funds. If you choose, you may use a template to summarize the matching funds. The template is available either from your Rural Development State Office or the program Web site at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other Eligibility Requirements

The following additional eligibility requirements apply to this program:

(a) *Use of Funds.* An application must propose to use Project funds, including grant and other contributions committed under the evaluation criteria for eligible purposes. Eligible Project purposes include the development of:

- Health care services;
- health education programs;
- health care job training programs; and
- the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Area.* The proposed Project must take place in a Rural Area within the Delta Region as defined in this Notice. However, the applicant need not propose to serve the entire Delta Region.

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period.* All awards are limited to up to a 24-month grant period based upon the complexity of the project. Your proposed grant period should begin no earlier than October 1, 2016, and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time period beginning before October 1, 2016, and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan.

(e) *Multiple Grant Requests.* The Consortium, including its members, is limited to submitting one application for funding under this Notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this Notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this Notice, all applications will be considered ineligible for funding.

(f) *Performance on Existing DHCS Awards.* If the lead entity, or any of its Consortium members, has an existing DHCS award, they must be performing satisfactorily to be considered eligible for a funding under this Notice. Satisfactory performance includes, but is not limited to, being up-to-date on all financial and performance reports and being current on all tasks as approved in the work plan. The Agency will use its discretion to make this determination.

(g) *Completeness.* Your application must provide all of the information requested in Section D.2. of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

Please see instructions below on how to access and submit a complete application for this funding opportunity.

1. Address to Request Application Package.

The application guide and copies of necessary forms for the DHCS Grant Program are available from these sources:

- The Internet at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants, http://www.grants.gov,* or
- For paper copies of these materials, please call (202) 690–1374.

2. Content and Form of Application Submission.

You may submit your application in paper form or electronically through *Grants.gov.* Your application must contain all required information.

To submit an application electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept emailed or faxed applications.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the Catalog of Federal Domestic Assistance Number for this program.

When you enter the *Grants.gov* Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

To use *Grants.gov*, you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov*.

You must submit all of your application documents electronically through *Grants.gov*. Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After electronically submitting an application through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

If you want to submit a paper application, send it to the State Office located in the State where you are headquartered. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices*.

You are strongly encouraged, but not required, to utilize the DHCS Application Guide found at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants*. The guide provides specific guidance on each of the required items listed and also provides all necessary forms and sample worksheets.

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

A completed application must include the following:

(a) *Form SF–424*, "Application for Federal Assistance."—The application for federal assistance must be completed by the lead entity as described in Section C.1. of this Notice. Your application must include your DUNS number and SAM (CAGE) code and expiration date. Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the CAGE code and expiration date and DUNS number in your application, it will not be considered for funding. The form must be signed by an authorized representative.

(b) *Form SF–424A*, "Budget Information—Non-Construction Programs." This form must be completed and submitted as part of the application package for non-construction projects.

(c) *Form SF–424B*, "Assurances—Non-Construction Programs." This form must be completed, signed, and submitted as part of the application package for non-construction projects.

(d) *Form SF–424C*, "Budget Information—Construction Programs." This form must be completed, signed, and submitted as part of the application package for construction projects.

(e) *Form SF–424D*, "Assurances—Construction Programs." This form must be completed, signed, and submitted as part of the application package for construction projects.

(f) *A project abstract*. You must provide a brief summary of the proposed Project, not to exceed 250 words, suitable for dissemination to the public and to Congress.

(g) *Executive summary*. You must provide a more detailed description of your project containing the following information: (1) Legal name of lead applicant; (2) consortium members; (3) applicant type (including consortium members); (4) application type (development of health care services, health education programs, health care job care training programs, or the development and/or expansion of health related facilities); (5) a summary of your project; (6) project goals; and (7) how you intend to use the grant funds. Limit two pages.

(h) *Evidence of eligibility*. You must provide evidence of the Consortium's eligibility to apply under this Notice. This section must include a detailed summary demonstrating how each Consortium member meets the definition of an eligible entity as defined under Definitions of this Notice.

(i) *Consortium agreements*. The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(j) *Scoring documentation*. You must address and provide documentation for each scoring criterion, specifically (1) the rurality of the project area and communities served, (2) the community needs and benefits derived from the project, and (3) project management and organization capability. See Section E.1.

(k) *Work Plan and Budget*. You must provide a work plan and budget that includes the following: (1) The specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the project and for individual project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

(l) *Performance Measures*. The Agency has also established annual performance measures to evaluate the DHCS program. You must provide estimates on the following performance measures as part of your application:

- Number of businesses assisted;
- Number of jobs created;
- Number of jobs saved;
- Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When you calculate jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When you calculate jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(m) *Financial information and sustainability*. You must provide current financial statements and a narrative description demonstrating sustainability of the project, all of which show sufficient resources and expertise to undertake and complete the project and how the project will be sustained following completion. Applicants must provide 3 years of pro-forma financial statements for the project.

(n) *Evidence of legal authority and existence.* The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(o) *Evidence of input solicited from local stakeholders.* The application must include documentation detailing support solicited from local government, public health care providers and other entities in the Delta Region. Evidence of support can include; but is not limited to surveys conducted amongst rural residents and stakeholders, notes from focus groups, or letters of support from local entities.

(p) *Service area maps.* You must provide maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or purchased with grant funds if applicable.

(q) *Form AD–3030.* Form AD–3030, “Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,” if you are a corporation. A corporation is any entity that has filed articles of incorporation in one of the 50 States, the District of Columbia, the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands, or the various territories of the United States including American Samoa, Guam, Midway Islands, the Commonwealth of the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. Corporations include both for profit and non-profit entities.

(r) *Certification of no current outstanding Federal judgment.* You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. To satisfy the Certification requirement, you should include this statement in your application: “[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property and will not use grant funds to pay any judgments obtained by the United States.” A separate signature is not required.

(s) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970, specifically in Subpart B, Exhibit C and Subpart C, Exhibit B. These documents can be found here: *http://www.rd.usda.gov/publications/regulations-guidelines/instructions.* Non-construction projects applying under this Notice are hereby classified as Categorical Exclusions according to 7 CFR 1970.53(b), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, which do not require any additional documentation.

3. DUNS Number and SAM Registration.

In order to be eligible (unless you are exempted under 2 CFR 25.110(b), (c) or (d)), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at *https://www.sam.gov/portal/public/SAM/;* and

(c) Continue to maintain an active SAM registration with current information at all times during which you have an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Agency may not make a Federal award to you until you have complied with all applicable DUNS and SAM requirements. If you have not fully complied with requirements by the time the Agency is ready to make a Federal award, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use this determination as a basis for making an award to another applicant.

4. Submission Date and Time.

Application Deadline Date: November 14, 2016.

Explanation of Deadlines: Complete paper applications must be postmarked and mailed, shipped, or sent overnight by November 14, 2016. The Agency will determine whether your application is late based on the date shown on the postmark or shipping invoice. You may also hand carry your application to one of our field offices, but it must be received by close of business on the deadline date. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. Late applications are not eligible for funding.

Electronic applications must be RECEIVED by *http://www.grants.gov* by midnight Eastern time November 7, 2016, to be eligible for funding. Please review the *Grants.gov* Web site at *http://grants.gov/applicants/organization_registration.jsp* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. *Grants.gov* will not accept applications submitted after the deadline.

5. Intergovernmental Review.

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain a SPOC may be obtained at *http://www.whitehouse.gov/omb/grants_spoc.* If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, Rural Development will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Cooperative Programs at 202–690–1374 or *cpgrants@wdc.usda.gov* if you have questions about this process.

6. Funding Restrictions.

The use of project funds, including grant funds and other contributions, cannot be used for ineligible purposes. In addition, you shall not use project funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided. However, project funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this Notice;

(c) To pay for costs of the project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training;

(e) Fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) Engage in any activities that are considered a Conflict of Interest, as defined by this Notice; or

(i) Fund any activities prohibited by 2 CFR 200;

In addition, your application will not be considered for funding if it does any of the following:

- Requests more than the maximum grant amount: or

- Proposes ineligible costs that equal more than 10 percent of the project funds.

If you include funds in your budget that are for ineligible purposes, we will consider the application for funding if the ineligible purposes total 10 percent or less of an applicant's project funds. However, if the application is successful, those ineligible costs must be removed from the work plan and budget and replaced with eligible costs before we will make the grant award, or the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, the application will not be considered for funding.

7. Other Submission Requirements.

(a) You should not submit your application in more than one format. You must choose whether to submit your application in hard copy or electronically. Applications submitted in hard copy should be mailed or hand-delivered to the State Office where the project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.* To submit an application electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* A password is not required to access the Web site.

(b) National Environmental Policy Act.

This Notice has been reviewed in accordance with 7 CFR part 1970, "Environmental Policies and Procedures." We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act (NEPA) regulation found at 7 CFR 1970.53(f), "Environmental Policies and Procedures." We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment.

(c) Civil Rights Compliance Requirements.

All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

E. Application Review Information

We will review your application to determine if it is complete and eligible. If at any time we determine that your application is ineligible, you will be notified in writing as to the reasons it was determined ineligible and you will be informed of your review and appeal rights.

We will only score applications in which the lead entity, partnering Consortium member entities, and the project are eligible. The applications must also be complete and sufficiently responsive to program requirements.

We will review each application to determine if it is eligible for funding and complete, based on the requirements of this Notice as well as other applicable Federal regulations.

Applications that are determined to be eligible and complete will be evaluated based on the criteria described below.

1. *Criteria.*

For each criterion, you must show how the Project has merit and why it is likely to be successful. If you do not address all parts of a criterion your application will be deemed ineligible. If you do not sufficiently communicate relevant Project information, you will receive lower scores. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual evaluation criterion. The maximum number of points that can be awarded to your application is 100. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal government.

The evaluation criteria are detailed in the DHCS Grant Application Guide which can be found at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* You must address each evaluation criterion outlined in this Notice. Any criterion not substantively addressed will receive zero points. There are three criteria totaling 100 points. They are listed below:

(a) Rurality of the Project and communities served (maximum of 30 points)—The rurality of the communities served by the Project is an objective criterion that measures the rurality of the Project's service area. It is determined by the population of the community based upon the 2010 U.S. Census data available on the American Fact Finder Web site—*http://www.factfinder.census.gov.* If you have multiple addresses in the same community (city, town or census designated place), please only list the community once when preparing your rurality calculation. The rurality calculation provided in the application will be checked and, if necessary, corrected by us.

Level	Community having a population		
	Over	Not in excess of	Points
1	0	5,000	30
2	5,001	20,000	20
3	20,001	50,000	10
4	50,001 or located in an Urbanized Area		0

(b) The Community Needs and Benefits derived from the Project (maximum of 30 points)—We will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in Delta Regional derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project, and provide convincing links between the Project and the benefits to the community to address its health needs. RBS will consider:

(1) The extent of the applicant's documentation explaining the health care needs, issues, and challenges facing the service area. Include what problems

the residents face and how the Project will benefit the residents in the region.

(2) The extent to which the applicant is able to show the relationship between the Project's design, outcome, and benefits.

(3) The extent to which the applicant explains the Project and its implementation and provides milestones which are well-defined and can be realistically completed.

(4) The extent to which the applicant clearly outlines a plan to track, report, and evaluate performance outcomes.

Applicants should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the project.

(c) The Project Management and Organization Capability (maximum of 40 points)—We will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. RBS will consider:

(1) The degree to which the organization has a sound management and fiscal structure including: Well-defined roles for administrators, staff, and established financial management systems.

(2) The extent to which the applicant identifies and demonstrates that qualifications, capabilities, and educational background of the identified key personnel (at a minimum the Project Manager) who will manage and implement programs are relevant and will contribute to the success of the Project.

(3) The extent to which the applicant demonstrates current successful and effective experience (or demonstrated experience within the past 5 years) addressing the health care issues in the Delta Region.

(4) The extent to which the applicant has experience managing grant-funded programs.

(5) The extent to which the applicant is able to correlate and support the budget to the project phases and implementation timeline.

(6) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(7) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes and economic development entities located in the Delta Region.

2. *Review and Selection Process.* The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of National and State Office employees in accordance with the point allocation specified in this Notice. A recommendation will be submitted to the Administrator to fund applications in highest ranking order, subject to availability of funds. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal government. If your application is evaluated, but not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. *Federal Award Notices.* If you are selected for funding, you will receive a signed notice of Federal award by postal mail from the State Office where your application was submitted, containing instructions on requirements necessary to proceed with execution and performance of the award. You must comply with all applicable statutes, regulations, and notice requirements before the grant award will be approved. We recognize that each funded Project is unique and therefore the terms and conditions of each award may vary. We will notify applicants whose applications are selected for funding by sending a letter of conditions, which must be met before the award can be finalized.

Once the conditions of the award are met, we will issue a grant agreement, which must be signed by the lead entity and us before the period of performance can begin. The lead entity may administer the award using the traditional subaward approach to the other Consortium members.

If you are not selected for funding, you will be notified in writing via postal mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division procedures. Funding of successfully appealed applications will be limited to available FY 2016 funding. You must comply with all applicable statutes, regulations, and notice requirements before the grant will be approved.

2. *Administrative and National Policy Requirements.* Additional requirements that apply to grantees selected for this in program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. In addition, all recipients of Federal financial assistance are required to comply with the Federal Funding Accountability and Transparency Act of 2006, and must report information about sub-awards and executive compensation (see 2 CFR part 170). These recipients must also maintain their registration in the SAM database as long as their grants are active. These regulations may be obtained at *http://www.ecfr.gov.*

The following additional requirements apply to grantees selected for this program:

- Agency-approved Grant Agreement.
- Letter of Conditions.
- Form RD 1940–1, ''Request for Obligation of Funds.''
- Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''
- Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.''
- Form RD 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15 and other Agency regulations. That no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the re-lender receives Federal financial assistance. That nondiscrimination statements are in advertisements and brochures.
- Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, ''(62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

- The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.
- Civil rights compliance reviews should be conducted by the Agency at pre award and post award. The results of the review should be documented on Form RD 400–8, Compliance Review, and appropriate documentation attached to substantiate findings of compliance or noncompliance. The original Form RD 400–8 should be maintained in the case file with copies forwarded to the Rural Development State Civil Rights Coordinator. If the recipient is not in compliance, copies must be immediately forwarded to the Director, Civil Rights Staff, with a recommendation for action to be taken.
- RD Instruction 2006–P requires that a Civil Rights Impact Analysis be conducted prior to approving or implementing a wide range of Agency activities. The Agency will prepare Form RD 2006–38, Civil Rights Impact Analysis, on the re-lender only.
- RD Instruction 1940–Q, Exhibit A–1, ‘‘Certification for Contracts, Grants and Loans’’
- SF–LLL, ‘‘Disclosure of Lobbying Activities’’ if applicable.

3. *Reporting.*

(a) *Federal Financial Reports.*

(1) An SF–425, ‘‘Federal Financial Report,’’ must be submitted listing expenditures according to agreed upon budget categories, on a semiannual basis. Reporting periods end each August 31 and February 28. Reports are due 30 days after the reporting period ends.

(2) A final project and financial status report within 90 days after the expiration or termination of the grant.

(3) Provide outcome project performance reports and final deliverables.

(b) *Performance Reports.*

Semiannual performance reports should compare accomplishments to the objectives stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan is not being met, the report should discuss the problems or delays that may affect completion of the project. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reports are due as provided in paragraph 3.a. of this section.

(c) *Subrecipient Reporting.*

The lead entity must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

(1) First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

(2) The Total Compensation of the Recipient's Executives (five most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *http://www.sam.gov* by the end of the month following the month in which the award was made.

(3) The Total Compensation of the Subrecipient's Executives (five most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the sub-award was made. Further details regarding these requirements can be obtained at *http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr170_main_02.tpl.*

(d) *Closeout.*

Grant closeout activities include a letter to the grantee with final instructions and reminders for amounts to be de-obligated for any unexpended grant funds, final project performance reports due, submission of outstanding deliverables, audit requirements, or other outstanding items of closure.

(e) *Report for Public Distribution.*

You must provide a report suitable for public distribution that describes the accomplishments made during this project. We may use this report as a success story to promote this program.

G. Federal Awarding Agency Contacts

If you have questions about this Notice, please contact the State Office as identified in the **ADDRESSES** section of this Notice. You are also encouraged to visit the application Web site for application tools, including an application guide and templates. The Web site address is: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *fax:* (202) 690–7442; or

(3) *email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: September 6, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Programs.

[FR Doc. 2016–21982 Filed 9–12–16; 8:45 am]

BILLING CODE 3410–XY–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: September 28, 2016; 6:00 p.m. EDT.

PLACE: Four Points Sheraton, 600 Kanawha Blvd. E. Charleston, WV 25301, Capital City Suites A&B.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting on Wednesday, September 28, 2016, starting at 6:00 p.m. EDT in the Capital City Suites A&B Rooms at the Four Points Sheraton in Charleston, West Virginia.

CSB staff will present findings and recommendations from the CSB investigation of the January 2014 leak from a storage tank at Freedom Industries that contaminated the local water supply, leaving hundreds of thousands of West Virginia residents without clean drinking water. An opportunity for public comment will be provided.

At the conclusion of a public comment period, the Board may vote to approve the final report and recommendations. Staff presentations are preliminary and are intended to allow the Board to consider in a public forum the issues and factors involved in this case.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the "Contact Person for Further Information," at least three business days prior to the meeting.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. The public comments will be directed to the board and facilitated by the Chairperson. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

Contact Person for Further Information

Hillary Cohen, Communication Manager, at *public@csb.gov* or (202) 446–8094. Further information about the CSB and this public meeting can be found on the CSB Web site at: *www.csb.gov.*

Dated: September 9, 2016.

Raymond C. Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2016–22122 Filed 9–9–16; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee To Discuss Project Concepts in Preparation To Select the Committee's Next Topic of Civil Rights Study

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Minnesota Advisory Committee (Committee) will hold a meeting on Monday, September 26, 2016, at 11 a.m. CDT. for the purpose of discussing project concepts regarding future study of civil rights concerns in the state.

DATES: The meeting will be held on Monday, September 26, 2016, at 11 a.m. CDT.

Public Call Information: Dial: 877–857–6161, Conference ID: 6681139.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–857–6161, conference ID: 6681139. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by COB Thursday September 29. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link (*http://facadatabase.gov/committee/meetings.aspx?cid=256* . Click on "meeting details" and then "documents" to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions

Discussion of Project Concepts: Civil Rights in Minnesota

Public Comment

Future Plans and Actions

Adjournment

Dated: September 7, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–21900 Filed 9–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[8/19/2016 through 9/7/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Hi-Tech Electronic Manufacturing, Inc.	7420 Carrol Road, San Diego, CA 92121.	8/19/2016	This firm manufactures circuit card, assemblies, chassis assemblies, and cable harnesses assemblies.
Duval Sign Company	2 Shaker Road, D105, Shirley, MA 1464.	8/22/2016	This firm is a manufacturer of of signs and visual displays.
Machine Tech Services, LLC	1232 Wall Road, Broussard, LA 70518.	8/22/2016	The firm is a manufacturer and repairer of oilfield equipment.
DaVincia, LLC, d/b/a Link Electronics.	2360 High Street, Suite 10, Jackson, MO 63755.	8/31/2016	The firm manufactures radio and television communications equipment for both household and commercial use.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–21891 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is initiating a changed circumstances review of the antidumping duty order on certain pasta from Italy (pasta) with respect to Tamma Industrie Alimentari di Capitanata, S.r.L. (Tamma).

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168.

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy, which included Delverde S.p.A. and its affiliate Tamma (collectively, Delverde).[1] Pursuant to a decision by the Court of International Trade, on remand, the Department determined that Delverde had a de *minimis* dumping margin and should be excluded from the order.[2]

In 2014, the Department conducted a changed circumstances review of Delverde S.p.A and found that Delverde Industrie Alimentari S.p.A. (Delverde) was not a successor-in-interest to Delverde S.p.A. based on aspects of the bankruptcy of Delverde S.p.A., changes in management, changes in supplier relationships, and changes in production facilities.[3] Thus, the Department found that Delverde was not entitled to the defunct entity's antidumping exclusion from the *AD Order.*[4]

On July 29, 2016, American Italian Pasta Company, Dakota Growers Pasta Company, and New World Pasta Company (Petitioners) filed a request for the Department to initiate a changed circumstances review of Tamma to determine whether Tamma is the successor-in-interest to the same company that was excluded from the *AD Order.*[5]

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

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[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996) (*AD Order*).

[2] *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy,* 66 FR 65889 (December 21, 2001).

[3] *See Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review,* 79 FR 28481 (May 16, 2014); unchanged in *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 79 FR 76339 (September 19, 2014) and accompanying Issues and Decision Memorandum (*Delverde CCR*).

[4] *See Delverde CCR.*

[5] *See* Petitioners' letter titled, "Request for 2015–2016 Administrative Reviews of the Antidumping Duty Order on Certain Pasta from Italy," dated July 29, 2016. This letter requests an administrative review and changed circumstances review of Tamma. On August 11, 2016, Petitioners refiled this review request to clarify the specific company names requested for review.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union (EU) authorized body and accompanied by a National Organic Program import certificate for organic products. Effective July 1, 2008, gluten free pasta is also excluded from this order.

The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the *AD Order* is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[6]

Based on the information Petitioners submitted in their July 29, 2016, letter, we find that we have received information which shows changed circumstances sufficient to warrant initiation of such a review in order to determine whether Tamma is the successor-in-interest to the company excluded from the *AD Order* that was previously affiliated with the now defunct Delverde S.p.A.[7] Therefore, in accordance with the above-referenced statute and regulation, the Department is initiating a changed circumstances review.

We intend to issue the final results of the changed circumstances review within 270 days from the date of initiation of this changed circumstance review, or within 45 days if all parties to the proceeding agree to the outcome of the review.[8] During the course of this review, we will not change the cash deposit requirements for the subject merchandise. The cash deposit rate will be changed, if warranted, pursuant only to the final results of the changed circumstances review.

This notice of initiation is in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: September 7, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22007 Filed 9–12–16; 8:45 am]

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[6] *See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 22847 (May 3, 2005), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Cut-to-Length Carbon Steel Plate from Romania,* 70 FR 35624 (June 21, 2005).

[7] *See* 19 CFR 351.216(d).

[8] *See* 19 CFR 351.216(e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880, A–201–847, A–489–824]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on heavy walled rectangular welded carbon steel pipes and tubes from the Republic of Korea (Korea), Mexico, and the Republic of Turkey (Turkey).

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado (Korea), David Crespo (Mexico), or Ross Belliveau (Turkey), AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4682, (202) 482–3693, and, (202) 482–4952 respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on July 21, 2016, the Department published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey.[1] On September 6, 2016, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey.[2]

Scope of the Orders

The merchandise covered by these orders is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

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[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From The Republic of Korea: Final Determination of Sales Less Than Fair Value,* 81 FR 47347 (July 21, 2016) (*Korea Final Determination*), *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Final Determination of Sales Less Than Fair Value,* 81 FR 47352 (July 21, 2016) (*Mexico Final Determination*), and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From The Republic of Turkey: Final Determination of Sales Less Than Fair Value,* 81 FR 47355 (July 21, 2016) (*Turkey Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–539 and 731–TA–1280–1282 (September 6, 2016) (ITC Notification).

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Antidumping Duty Orders

As stated above, on September 6, 2016, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found material injury with respect to heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey.[3] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing these antidumping duty orders. Because the ITC determined that imports of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Turkey, and Mexico are materially injuring a U.S. industry, unliquidated entries of such merchandise from Korea, Mexico, and Turkey entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey. Antidumping duties will be assessed on unliquidated entries of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey entered, or withdrawn from warehouse, for consumption on or after March 1, 2016, the date of publication of the preliminary determinations,[4] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determinations as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey. In the *Turkey Final Determination* the Department calculated a zero percent margin for Ozdemir Boru Profil San. Ve Tic. Ltd. Sti. (Ozdemir). Accordingly, Ozdemir is excluded from the antidumping duty order, and no suspension of liquidation is required for heavy walled rectangular welded carbon steel pipes and tubes from Turkey produced and exported by Ozdemir. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[5] The relevant all-others rates apply to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from Turkey will be adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from Turkey.[6]

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey, we extended the four-month period to six months in each case.[7] In the underlying investigations, the Department published the preliminary determinations on March 1, 2016. Therefore, the extended period, beginning on the date of publication of the preliminary determinations, ended on August 28, 2016. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey entered, or withdrawn from warehouse, for consumption on or after August 28, 2016, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

The weighted-average dumping margins are as follows:

	Exporter/producer	Dumping margins (percent)
Korea	Dong-A Steel Company	2.34
	HiSteel Co., Ltd	3.82
	All Others	3.24
Mexico	Maquilacero S.A. de C.V	3.83

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[3] *Id.*

[4] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From The Republic of Korea: Preliminary Determination of Sales Less Than Fair Value and Postponement of Final Determination,* 81 FR 10585 (March 1, 2016) (*Korea Preliminary Determination*), *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Affirmative Preliminary Determination of Sales Less Than Fair Value and Postponement of Final Determination,* 81 FR 10587 (March 1, 2016) (*Mexico Preliminary Determination*), and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From The Republic of Turkey: Preliminary Determination of Sales Less Than Fair Value and Postponement of Final Determination,* 81 FR 10583 (March 1, 2016) (*Turkey Preliminary Determination*).

[5] *See* section 736(a)(3) of the Act.

[6] *See Turkey Final Determination,* 81 FR at 47356.

[7] *See Korea Preliminary Determination, Mexico Preliminary Determination,* and *Turkey Preliminary Determination.*

	Exporter/producer	Dumping margins (percent)
	Productos Laminados de Monterrey S.A. de C.V	5.21
	All Others	4.91

	Exporter/producer	Dumping margins (percent)	Cash deposit (percent)
Turkey	MMZ Boru Profil Uretim Sanayi Ve Tic. A.S	35.66	35.66
	All Others	17.83	17.73

Note: In the *Turkey Final Determination,* we adjusted the all-others cash deposit rate by 0.10 percent to account for the export subsidies included in the all-others rate calculated in the companion countervailing duty investigation. *See* Memorandum to the File from Rebecca Trainor, "Calculation of the All-Others Rate," dated July 14, 2016, which is on the record of the LTFV investigation of heavy walled rectangular welded carbon steel pipes and tubes from Turkey.

This notice constitutes the antidumping duty orders with respect to heavy walled rectangular welded carbon steel pipes and tubes from Korea, Mexico, and Turkey pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 7, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22003 Filed 9–12–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 10, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from India. The period of review (POR) is February 1, 2014, through January 31, 2015. Based on our analysis of the comments received, we made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse or Manuel Rey, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–5518, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 223 producers/exporters. The producers/exporters which the Department selected for individual examination are Falcon Marine Exports Limited and its affiliate K.R. Enterprises (collectively, Falcon) and the Liberty Group.[1] The producers/exporters which were not selected for individual examination are listed in the "Final Results of the Review" section of this notice.

On March 10, 2016, the Department published the *Preliminary Results.*[2] In April 2016, we received a case brief Falcon, the Liberty Group, and 11 additional producers/exporters of the subject merchandise (collectively, the respondents); we also received rebuttal briefs from the Ad Hoc Shrimp Trade Action Committee (the petitioner) and the Ad Hoc Shrimp Trade Action Committee.

On June 7, 2016, we postponed the final results by 60 days, until September 6, 2016.[3] In July 2016, we held a public hearing at the request of the respondents.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov;* the Issues and Decision Memorandum is also available to all parties in the Central Records Unit, room B8024, of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

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[1] The Liberty Group consists of: Devi Marine Food Exports Private Ltd.; Kader Exports Private Limited; Kader Investment and Trading Company Private Limited; Liberty Frozen Foods Pvt. Ltd.; Liberty Oil Mills Ltd.; Premier Marine Products Private Limited; and Universal Cold Storage Private Limited.

[2] *See Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2014–2015,* 81 FR 12705 (March 10, 2016) (*Preliminary Results*).

[3] *See* memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Blaine Wiltse, Senior International Trade Compliance Analyst, Office II, Antidumping and Countervailing Duty Operations, entitled "Certain Frozen Warmwater Shrimp from India; 2014–2015 Administrative Review: Extension of Deadline for Final Results," dated June 7, 2016.

[4] For a complete description of the Scope of the Order, *see* the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for for Antidumping and Countervailing Duty Operations, entitled, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India," (dated concurrently with these results) (Issues and Decision Memorandum), which is hereby adopted by this notice.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the margin calculations performed for Falcon and the Liberty Group.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from 19 companies named in the *Initiation Notice.*[5] In the *Preliminary Results,* we preliminarily determined that the companies listed below had no reviewable transactions during the POR.[6] We received no comments from interested parties with respect to these claims and we continue to determine that these companies had no reviewable transactions during the POR. These companies are:

1. Amulya Sea Foods
2. Ayshwarya Sea Foods Private Limited
3. Baby Marine International
4. Baby Marine Sarass
5. Blue Water Foods & Exports Pvt. Ltd.
6. Capithan Exporting Company
7. Cherukattu Industries (Marine Division)
8. Coreline Exports
9. Delsea Exports Pvt. Ltd.
10. GEO Aquatic Products Pvt. Ltd.
11. GVR Exports Pvt. Ltd.
12. Indo Fisheries
13. Navayuga Exports Limited
14. R F Exports
15. Santhi Fisheries & Exports Limited
16. Selvam Exports Private Limited
17. Sterling Foods
18. Veronica Marine Exports Private Limited
19. Vinner Marine Processors & Exporters of Marine Products

Period of Review

The POR is February 1, 2014, through January 31, 2015.

Final Results of the Review

We are assigning the following dumping margins to the firms listed below as follows:

Manufacturer/exporter	Margin (percent)
Falcon Marine Exports Limited/K.R. Enterprises	0.74
The Liberty Group	3.37

Review-Specific Average Rate Applicable to the Following Companies:[7]

Manufacturer/exporter	Margin (percent)
Abad Fisheries	2.20
Adilakshmi Enterprises	2.20
Akshay Food Impex Private Limited	2.20
Allana Frozen Foods Pvt. Ltd	2.20
Allanasons Ltd	2.20
AMI Enterprises	2.20
Anand Aqua Exports	2.20
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	2.20
Ananda Enterprises (India) Private Limited	2.20
Andaman Sea Foods Pvt. Ltd	2.20
Angelique Intl	2.20
Anjaneya Seafoods	2.20
Apex Frozen Foods Private Limited	2.20
Aquatica Frozen Foods Global Pvt. Ltd	2.20
Arvi Import & Export	2.20
Asvini Exports	2.20
Asvini Fisheries Private Limited	2.20
Avanti Feeds Limited	2.20
B R Traders	2.20
Baby Marine Exports	2.20
Balasore Marine Exports Private Limited	2.20
Bhatsons Aquatic Products	2.20
Bhavani Seafoods	2.20
Bijaya Marine Products	2.20
Blue Fin Frozen Foods Pvt. Ltd	2.20
Bluepark Seafoods Private Ltd	2.20
BMR Exports	2.20
BMR Industries Private Limited	2.20
Britto Exports	2.20
C P Aquaculture (India) Ltd	2.20
Calcutta Seafoods Pvt. Ltd	2.20
Canaan Marine Products	2.20
Castlerock Fisheries Ltd	2.20
Chemmeens (Regd)	2.20
Choice Canning Company	2.20
Choice Trading Corporation Private Limited	2.20
Coastal Aqua	2.20
Coastal Corporation Ltd	2.20
Cochin Frozen Food Exports Pvt. Ltd	2.20
Corlim Marine Exports Pvt. Ltd	2.20
D2 D Logistics Private Limited	2.20
Damco India Private Limited	2.20
Devi Fisheries Limited/Satya Seafoods Private Limited/Usha Seafoods	2.20
Diamond Seafoods Exports/Edhayam Frozen Foods Pvt. Ltd/Kadalkanny Frozen Foods/Theva & Company	2.20
Devi Sea Foods Limited[8]	2.20
Digha Seafood Exports	2.20
Esmario Export Enterprises	2.20
Exporter Coreline Exports	2.20
Febin Marine Foods	2.20
Five Star Marine Exports Private Limited	2.20
Forstar Frozen Foods Pvt. Ltd	2.20
Frontline Exports Pvt. Ltd	2.20
G A Randerian Ltd	2.20
Gadre Marine Exports	2.20
Galaxy Maritech Exports P. Ltd	2.20
Gayatri Seafoods	2.20
Geo Seafoods	2.20
Goodwill Enterprises	2.20
Grandtrust Overseas (P) Ltd	2.20
Haripriya Marine Export Pvt. Ltd	2.20
Harmony Spices Pvt. Ltd	2.20
HIC ABF Special Foods Pvt. Ltd	2.20
Hindustan Lever, Ltd	2.20
Hiravata Ice & Cold Storage	2.20
Hiravati Exports Pvt. Ltd	2.20
Hiravati International P. Ltd (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	2.20
Hiravati International Pvt. Ltd (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.20
IFB Agro Industries Ltd	2.20
Indian Aquatic Products	2.20
Indo Aquatics	2.20
Indo French Shellfish Company Private Limited	2.20
Innovative Foods Limited	2.20
International Freezefish Exports	2.20
Interseas	2.20
ITC Limited, International Business	2.20
ITC Ltd	2.20
Jaya Satya Marine Exports	2.20
Jaya Satya Marine Exports Pvt. Ltd	2.20

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[5] *See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews,* 80 FR 16634 (March 30, 2015) (*Initiation Notice*).

[6] *See Preliminary Results,* 81 FR at 12706.

[7] This rate is based on the actual weighted-average margin using the publically-ranged data calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* the memorandum from Blaine Wiltse, Senior International Trade Compliance Analyst, to the File, entitled, "Calculation of the Review-Specific Average Rate for the Final Results," dated concurrently with this notice.

Manufacturer/exporter	Margin (percent)
Jayalakshmi Sea Foods Private Limited	2.20
Jinny Marine Traders	2.20
Jiya Packagings	2.20
K R M Marine Exports Ltd	2.20
K V Marine Exports	2.20
Kalyan Aqua & Marine Exports India Pvt. Ltd	2.20
Kalyanee Marine	2.20
Kanch Ghar	2.20
Karunya Marine Exports Private Limited	2.20
Kay Kay Exports	2.20
Kings Marine Products	2.20
Koluthara Exports Ltd	2.20
Konark Aquatics & Exports Pvt. Ltd	2.20
Landauer Ltd	2.20
Libran Cold Storages (P) Ltd	2.20
Magnum Estates Limited	2.20
Magnum Export	2.20
Magnum Sea Foods Limited	2.20
Malabar Arabian Fisheries	2.20
Malnad Exports Pvt. Ltd	2.20
Mangala Marine Exim India Pvt. Ltd	2.20
Mangala Sea Products	2.20
Mangala Seafoods	2.20
Meenaxi Fisheries Pvt. Ltd	2.20
Milesh Marine Exports Private Limited	2.20
MSRDR Exports	2.20
MTR Foods	2.20
Munnangi Sea Foods Pvt. Ltd	2.20
N.C. John & Sons (P) Ltd	2.20
Naga Hanuman Fish Packers	2.20
Naik Frozen Foods Private Limited	2.20
Naik Seafoods Ltd	2.20
Neeli Aqua Private Limited	2.20
Nekkanti Sea Foods Limited	2.20
Nezami Rekha Sea Foods Private Limited	2.20
NGR Aqua International	2.20
Nila Sea Foods Exports	2.20
Nila Sea Foods Pvt. Ltd	2.20
Nine Up Frozen Foods	2.20
Nutrient Marine Foods Limited	2.20
Oceanic Edibles International Limited	2.20
Overseas Marine Export	2.20
Paragon Sea Foods Pvt. Ltd	2.20
Paramount Seafoods	2.20
Parayil Food Products Pvt. Ltd	2.20
Penver Products Pvt. Ltd	2.20
Pesca Marine Products Pvt. Ltd	2.20
Pijikay International Exports P Ltd	2.20
Pisces Seafood International	2.20
Premier Exports International	2.20
Premier Marine Foods	2.20
Premier Seafoods Exim (P) Ltd	2.20
R V R Marine Products Limited	2.20
Raa Systems Pvt. Ltd	2.20
Raju Exports	2.20
Ram's Assorted Cold Storage Ltd	2.20
Raunaq Ice & Cold Storage	2.20
Raysons Aquatics Pvt. Ltd	2.20
Razban Seafoods Ltd	2.20
RBT Exports	2.20
RDR Exports	2.20
Riviera Exports Pvt. Ltd	2.20
Rohi Marine Private Ltd	2.20
S & S Seafoods	2.20
S Chanchala Combines	2.20
S. A. Exports	2.20
S.J. Seafoods	2.20
Safa Enterprises	2.20
Sagar Foods	2.20
Sagar Grandhi Exports Private Limited	2.20
Sagar Samrat Seafoods	2.20
Sagarvihar Fisheries Pvt. Ltd	2.20
Sai Marine Exports Pvt. Ltd	2.20
SAI Sea Foods	2.20
Salvam Exports (P) Ltd	2.20
Sanchita Marine Products Private Limited	2.20
Sandhya Aqua Exports	2.20
Sandhya Aqua Exports Pvt. Ltd	2.20
Sandhya Marines Limited	2.20
Sarveshwari Exports	2.20
Sawant Food Products	2.20
Sea Foods Private Limited	2.20
Seagold Overseas Pvt. Ltd	2.20
Sharat Industries Ltd	2.20
Sharma Industries	2.20
Shimpo Exports Pvt. Ltd	2.20
Shippers Exports	2.20
Shiva Frozen Food Exports Pvt. Ltd	2.20
Shree Datt Aquaculture Farms Pvt. Ltd	2.20
Shroff Processed Food & Cold Storage P Ltd	2.20
Silver Seafood	2.20
Sita Marine Exports	2.20
Sowmya Agri Marine Exports	2.20
Sprint Exports Pvt. Ltd	2.20
Sri Chandrakantha Marine Exports	2.20
Sri Sakkthi Cold Storage	2.20
Sri Satya Marine Exports	2.20
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	2.20
Srikanth International	2.20
Star Agro Marine Exports Private Limited	2.20
Star Organic Foods Incorporated	2.20
Sun-Bio Technology Ltd	2.20
Supran Exim Private Limited	2.20
Suryamitra Exim Pvt. Ltd	2.20
Suvarna Rekha Exports Private Limited	2.20
Suvarna Rekha Marines P Ltd	2.20
TBR Exports Pvt Ltd	2.20
Teekay Marine P. Ltd	2.20
Tejaswani Enterprises	2.20
The Waterbase Ltd	2.20
Triveni Fisheries P Ltd	2.20
Uniroyal Marine Exports Ltd	2.20
Unitriveni Overseas	2.20
V V Marine Products	2.20
V.S Exim Pvt Ltd	2.20
Vasista Marine	2.20
Veejay Impex	2.20
Victoria Marine & Agro Exports Ltd	2.20
Vishal Exports	2.20
Vitality Aquaculture Pvt., Ltd	2.20
Wellcome Fisheries Limited	2.20
West Coast Frozen Foods Private Limited	2.20
Z A Sea Foods Pvt. Ltd	2.20

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), because Falcon and the Liberty Group reported the entered value for all of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the entered value.

For the companies which were not selected for individual examination, we used as the assessment rate the cash deposit rate assigned to these exporters, in accordance with our practice.[9]

The Department's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Falcon or the Liberty Group for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of

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[8] Shrimp produced and exported by Devi Sea Foods (Devi) was excluded from this order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we conducted this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

[9] *See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review,* 79 FR 51309 (August 28, 2014).

this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, as well as those companies listed in the "Determination of No Shipments" section, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: September 6, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Scope of the Order
Margin Calculations
Discussion of the Issues
  Comment 1: Whether the Department Should Revise Its Differential Pricing Analysis
  Comment 2: Whether To Use Entry Date To Define Time Periods for the Differential Pricing Analysis
  Comment 3: Ministerial Errors for the Liberty Group
Recommendation

[FR Doc. 2016–22008 Filed 9–12–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain chemically-bonded magnesia carbon bricks from the People's Republic of China (PRC). The period of review (POR) is January 1, 2014, through December 31, 2014. We preliminarily find no evidence of any reviewable entries, shipments, or sales of subject merchandise to the United States during the POR by any of the companies subject to this review, and are therefore issuing a preliminary no shipments determination.

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of the order includes certain chemically-bonded magnesia carbon bricks. Certain chemically-bonded magnesia carbon bricks that are the subject of this order are currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 6902.10.1000, 6902.10.5000, 66815.91.0000, 6815.99.2000, and 6815.99.4000. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[1] The written description is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The Preliminary Decision Memorandum contains a full description of the methodology underlying our conclusions, and is a public document on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum is identical in content.

Preliminary Determination of No Shipments

Based on information submitted after the initiation of this administrative review, and due to the fact that we have not received any information from U.S. Customs and Border Protection (CBP) indicating that the companies subject to this review had reviewable entries to the United States during the POR,[2] the Department has preliminarily determined that the record evidence indicates that no company subject to this review had reviewable entries during the POR. As is our practice, the Department finds that it is not appropriate to rescind this review, but, rather, to complete this review and to issue appropriate instructions to CBP based on the final results of this review.[3]

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[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147, 5148 (February 1, 2005).

[1] For a full description of the scope of the order, *see* the Department Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China; 2014," (dated concurrently with this notice) (Preliminary Decision Memorandum).

[2] *See* the Preliminary Decision Memorandum for a list of companies subject to this review.

Assessment Rates

We intend to issue assessment instructions to CBP 15 days after the publication of the final results of this review.

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the publication of this notice.[4] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6] Case and rebuttal briefs should be filed through ACCESS.[7] In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Time on the date on which it is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or wish to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically through ACCESS, within 30 days after the date of publication of this notice.[8] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of countervailing duties occurred and the subsequent assessment of double countervailing duties.

Notice to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 6, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22001 Filed 9–12–16; 8:45 am]

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[3] *See, e.g., Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke the Order (in Part); 2011–2012,* 78 FR 15686 (March 12, 2013) and accompanying Decision Memorandum at 7–8, unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011–2012,* 78 FR 42497 (July 16, 2013) at the section, "Rescission, in Part;" *see also Silicomanganese From India: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 28826 (May 10, 2016) and accompanying Decision Memorandum at 3.

[4] *See* 19 CFR 351.309(c)(ii).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

[7] *See* 19 CFR 351.303.

[8] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–048]

Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers/exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the People's Republic of China (PRC). The period of investigation is January 1, 2015, through December 31, 2015. Interested parties are invited to comment on this preliminary determination.

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Mullen, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5260.

SUPPLEMENTARY INFORMATION:

Alignment of Final Countervailing Duty (CVD) Determination With Final Antidumping Duty (AD) Determination

On the same day the Department initiated this CVD investigation, the Department also initiated CVD investigations of CTL plate from Brazil and the Republic of Korea (Korea) and AD investigations of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey.[1] The CVD investigation covers the same merchandise as the AD investigations of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, South Africa, Taiwan, and Turkey.[2]

On August 25, 2016, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (Act), Petitioners[3] requested alignment of the final CVD determination with the final AD determination of CTL plate from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination of CTL plate from Austria, Belgium, France, Germany, Italy, Japan, and Taiwan.[4] Consequently, we intend to issue the final CVD determination on the same date as the final AD determination, which is currently scheduled to be issued no later than January 18, 2017, unless postponed.[5]

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[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 81 FR 27098 (May 5, 2016) (*Initiation Notice*); *see also Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 27089 (May 5, 2016).

[2] For a complete case history, *see* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China," dated concurrently with this notice and hereby incorporated by reference, and adopted by this notice (Preliminary Decision Memorandum).

[3] Petitioners in this investigation are ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises LLC.

[4] *See* Letter to the Secretary of Commerce from Petitioners, "Carbon and Alloy Steel Cut-to-Length Plate from People's Republic of China and Korea—Petitioners' Request to Align the Countervailing Duty Final Determinations with the Companion Antidumping Duty Final Determination," (August 25, 2016).

Scope of the Investigation

The scope of this investigation covers CTL plate from the PRC. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to the Department's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).[7] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Department's Scope Memorandum issued concurrently with this notice.[8] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify the exclusion for stainless steel plate.[9] The Department is also correcting two tariff numbers that were misidentified in the Petitions and in the *Initiation Notice.*[10]

Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[11] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we determined an estimated countervailable subsidy rate for each producer/exporter of the subject merchandise individually investigated. We preliminarily determine these rates to be:

Company	Subsidy rate (percent)
Jiangyin Xingcheng Special Steel Works Co. Ltd	210.50
Hunan Valin Xiangtan Iron & Steel	210.50
Viewer Development Co., Ltd	210.50
All Others	210.50

In accordance with section 703(d)(2) of the Act, we will direct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of CTL from the PRC as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the amounts indicated above.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[12] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[13] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 6, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling", (*e.g.*, products which have been beveled or rounded at the edges).

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[5] The AD determinations of CTL plate from Brazil, South Africa, and Turkey were not postponed. *See Certain Carbon and Alloy Steel Cut-to-Length Plate Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 81 FR 59185 (August 29, 2016).

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See Initiation Notice,* 81 FR at 27099.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations" (Preliminary Scope Decision Memorandum) dated concurrently with this preliminary determination.

[9] Specifically, the revised scope now states that stainless steel plate must not contain more than 1.2 percent of carbon by weight.

[10] *Id.*

[11] *See* Preliminary Decision Memorandum.

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(c)–(d) and 19 CFR 351.310(c).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*e.g.*, orders on hot-rolled flat-rolled steel); and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350 HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75 ksi min and UTS 95 ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Application of the CVD Law to Imports From the PRC
VIII. Subsidies Valuation
IX. Use of Fact Otherwise Available and Adverse Inferences
X. Analysis of Programs
XI. ITC Notification
XII. Disclosure and Public Comment
XIII. Conclusion

[FR Doc. 2016–21999 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing a countervailing duty order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). Also, as explained in this notice, the Department is amending its final affirmative determination with respect to HWR pipes and tubes from Turkey to correct the rate assigned to MMZ Onur Boru Profil Uretim San Ve Tic. A.S. (MMZ) and the "All-Others" rate.

DATES: Effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Aqmar Rahman, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–0768, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2016, the Department published its final determination in the countervailing duty investigation of HWR pipes and tubes from Turkey.[1]

On July 21, 2016, and July 25, 2016, the Department received timely allegations from respondents Ozdemir Boru Profil San ve Tic. Ltd. Sti. (Ozdemir), MMZ, and the Government of Turkey, that the Department made ministerial errors in the final determination.[2] The Department analyzed the allegations and determined that there was a ministerial error as alleged by MMZ, within the meaning of section 705(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f).[3] *See* "Amendment to the Final Determination" section below for further discussion.

On September 6, 2016, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Act that an industry in the United States is materially injured by reason of subsidized imports of HWR pipes and tubes from Turkey.[4]

Scope of the Order

The products covered by this order are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Amendment to the Final Determination

As discussed above, after analyzing the comments received, we determined, in accordance with section 705(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in certain calculations for the *Final Determination* with respect to MMZ, as alleged by MMZ.[5] Accordingly, we issued amended final calculation memoranda with respect to the net subsidy rates for MMZ and "All-Others" in light of that ministerial error.[6] To correct the error, we are issuing this amended final CVD determination, which revises the *ad valorem* subsidy rates for MMZ and "All-Others." The amended *ad valorem* subsidy rate for MMZ is 9.87 percent. We are using this rate to derive an amended *ad valorem* subsidy rate of 12.58 percent for "All-Others." [7]

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[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination, 81 FR 47349 (July 21, 2016) (Final Determination).*

[2] *See* Letter from Ozdemir, entitled "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Request for correction of ministerial error," dated July 21, 2016; Letter from MMZ, entitled "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Ministerial Error Comments," dated July 25, 2016; and Letter from the Government of Turkey, entitled "Request of the Government of Turkey for Correction of Ministerial Errors on Final Determination in CVD Investigation on Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey," dated July 25, 2016.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Ministerial Error Allegations in the Final Determination," dated August 19, 2016 (Ministerial Error Memorandum). The Ministerial Error Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[4] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–539 and 731–TA–1280–1282 (September 6, 2016) (ITC Notification).

[5] *See* Ministerial Error Memorandum.

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing HWR pipes and tubes is materially injured by reason of subsidized imports of HWR pipes and tubes from Turkey. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of HWR pipes and tubes from Turkey entered, or withdrawn from warehouse, for consumption on or after December 28, 2015, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**,[8] and before April 26, 2016, the effective date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of HWR pipes and tubes from Turkey made on or after April 26, 2016, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective April 26, 2016, of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of HWR pipes and tubes from Turkey, effective the date of publication of the ITC's notice of final determinations in the **Federal Register**, and to assess, upon further instruction by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determinations in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Exporter/producer	Subsidy rate (percent)
MMZ Onur Boru Profil Uretim San Ve Tic. A.S	9.87
Ozdemir Boru Profil San ve Tic. Ltd Sti	15.08
All-Others	12.58

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to HWR pipes and tubes from Turkey pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B8024 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: September 7, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–22000 Filed 9–12–16; 8:45 am]

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[6] *See* Memorandum to Irene Darzenta Tzafolias, Program Manager, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Determination Subsidy Rate for MMZ Onur Boru Profil San Ve Tic. A.S.," dated August 19, 2016; *see also* Memorandum to Irene Darzenta Tzafolias, Program Manager, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Calculation of the "All Others" Rate," dated August 19, 2016.

[7] *See* Ministerial Error Memorandum.

[8] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 80 FR 80749 (December 28, 2016) (*Preliminary Determination*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE870

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public joint meeting of its Whiting Advisory Panel and Whiting Plan Development Team on October 6, 2016 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, October 6, 2016 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel and PDT will analyze potential small-mesh multispecies fishery limited access qualification criteria options as well as discuss other Amendment 22 alternatives. The panel and team will also discuss scheduling and priorities for 2017 and develop framework adjustment alternatives, if the Council initiates a framework adjustment at its September Council meeting in response to northern red hake exceeding its Annual Catch Limit. They will also address other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–21907 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE792

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas; Fall Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2016 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held October 13–14, 2016. There will be an open session on Thursday, October 13, 2016, from 9 a.m. through approximately 12:30 p.m. The remainder of the meeting will be closed to the public and is expected to end by 1 p.m. on October 14. Interested members of the public may present their views during the public comment session on October 13, 2016.

ADDRESSES: The meeting will be held at the Hilton Doubletree Hotel, 8727 Colesville Rd., Silver Spring, MD 20910. Written comments should be sent via email (*Rachel.O'Malley@noaa.gov*). Comments may also be sent via mail to Rachel O'Malley at NMFS, Office of International Affairs and Seafood Inspection, Room 10653, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs and Seafood Inspection, 301–427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 13–14, 2016, first in an open session to consider management- and research-related information on stock status of Atlantic highly migratory species and then in a closed session to discuss sensitive matters. The open session will be from 9 a.m. through 12:30 p.m. on October 13, 2016, including an opportunity for public comment beginning at approximately 12 p.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 11, 2016 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (*e.g.,* alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the conservation and management of Atlantic highly migratory species.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 or *Rachel.O'Malley@noaa.gov* at least 5 days prior to the meeting date.

Dated: September 8, 2016.

John Henderschedt,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2016–21992 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE793

Advisory Committee and Species Working Group Technical Advisor Appointment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for Technical Advisors to the Advisory Committee's species working groups.

DATES: Nominations must be received by October 3, 2016.

ADDRESSES: Nominations should be sent via email (*Rachel.O'Malley@noaa.gov*). Nominations may also be sent via mail to Rachel O'Malley at NMFS, Office of International Affairs, Room 10653, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs, 301–427–8373.

SUPPLEMENTARY INFORMATION: Section 971b of ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be comprised of: (1) Not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fisheries Management Councils. Each member of the Advisory Committee appointed under paragraph (1) shall serve for a term of 2 years and be eligible for reappointment. All members of the Advisory Committee are appointed in their individual professional capacity and undergo a background screening. Any individual appointed to the Committee who is unable to attend all or part of an Advisory Committee meeting may not appoint another person to attend such meetings as his or her proxy. Members of the Advisory Committee shall receive no compensation for their services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee. The terms of all currently appointed Advisory Committee members expire on December 31, 2016.

Section 971b(1) of ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four technical advisors, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners: A Bluefin Tuna Working Group, a Swordfish/Sharks Working Group, a Billfish Working Group, and a Bigeye, Albacore, Yellowfin, and Skipjack (BAYS) Tunas Working Group. Technical Advisors to the species working groups serve at the request of the Commissioners; therefore the Commissioners can choose to alter these appointments at any time. As with Committee Members, Technical Advisors may not be represented by a proxy during any official meetings of the Advisory Committee.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Self-nominations are acceptable. Letters of recommendation are useful but not required. When making a nomination, please specify which appointment (Advisory Committee member or Technical Advisor to a species working group) is being sought. Nominees may also indicate which of the species working groups is preferred, although placement on the requested group is not guaranteed.

Dated: September 8, 2016.

John Henderschedt,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2016–21995 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sanctuary System Business Advisory Council: Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council (council). The meeting is open to the public, and participants may provide comments at the appropriate time during the meeting.

DATES: The meeting will be held Tuesday, September 27, 2016, from 9:00 a.m. to 4:30 p.m. ET, and an opportunity for public comment will be provided at 3:45 p.m. ET. Both these times and the agenda topics described below are subject to change.

ADDRESSES: The meeting will be held in The National Press Club's Bloomberg Room located on the 13th Floor of The National Press Building at 529 14th Street NW., Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Rebecca Holyoke, Office of National Marine Sanctuaries, 1305 East-West Highway, Silver Spring, Maryland 20910 (Phone: 240–533–0685; Fax: 301–713–0404; Email: *Rebecca.Holyoke@noaa.gov*).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for a network of underwater parks encompassing more than 170,000 square miles of marine and Great Lakes waters from Washington state to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 13 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (council) has been formed to provide advice and recommendations to the Director regarding the relationship of ONMS with the business community. Additional information on the council can be found at *http://sanctuaries.noaa.gov/management/ac/welcome.html.*

Matters to be Considered: The meeting will provide an opportunity for council members to hear news from across the National Marine Sanctuary System, including updates on the potential designation of two new national marine sanctuaries; two proposed sanctuary expansions; and the differences between a national marine sanctuary and a marine national monument. Council members will also be able to review and comment on ongoing efforts to develop a sanctuary system business plan and enhance the online presence of ONMS's social media campaign, *Earth is Blue.* Lastly, council members will learn about NOAA's plans to maintain progress on its resilient communities, place-based conservation, and "blue economies" priorities during the transition to a new presidential administration in 2017. The agenda, available at *http://sanctuaries.noaa.gov/management/bac/meetings.html,* is subject to change.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 23, 2016.

John Armor,

Acting Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–21933 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Advisory Board of the National Technical Information Service

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Advisory Board of the National Technical Information Service (NTIS) (the Advisory Board), which advises the Secretary of Commerce and the Director of NTIS on policies and operations of NTIS.

DATES: The Advisory Board will meet on Thursday, September 22, 2016 from 1:00 p.m. to approximately 4:00 p.m.

ADDRESSES: The Advisory Board meeting will be held in Room 116 of the NTIS location at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Don Hagen, (703) 605–6142, *DHagen@ntis.gov.*

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by section 3704b(c) of title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The meeting will focus on a review of NTIS data mission and strategic direction. A final agenda and summary of the proceedings will be posted at NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.aspx*).

The NTIS location is a secure one. Accordingly, persons wishing to attend should call the NTIS Security Office, (703) 605–6440, to arrange for attendance no later than Tuesday, September 20, 2016. If there are sufficient expressions of interest, up to one-half hour will be reserved for public comments during the session. Questions from the public will not be considered by the Board but any person who wishes to submit a written question for the Board's consideration should email it to Mr. Don Hagen, *DHagen@ntis.gov,* Subject: NTIS Advisory Board, not later than Friday, September 16, 2015.

Dated: September 7, 2016.

Gregory Capella,

Deputy Director.

[FR Doc. 2016–21976 Filed 9–12–16; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, September 28, 2016 and 9:00 a.m. to 1:00 p.m. on Thursday, September 29, 2016. Public registration will begin at 8:45 a.m. on both days. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M2. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil,* phone: 571–256–9004.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the seventh meeting of the Government-Industry Advisory Panel with a series of meetings planned through December 14, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final discussions and deliberations on 10 U.S.C. 2320 and 2321 tension points; (2) Briefings from various industry suppliers to understand challenges within the supply chain; (3) Briefing from a Service Program Executive Office; (4) Briefing from the Defense Logistics Agency; (5) Briefing on government and industry perspectives on a DoD Consortium; (6) Briefing from Defense Pricing Center; (7) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the September 28–29, 2016 meeting will be available as requested or at the following site: *https://database.faca.gov/committee/meetingdocuments.aspx?flr=141645&cid=2561.*

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (September 23) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on September 28. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: September 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–21977 Filed 9–12–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0099]

Agency Information Collection Activities; Comment Request; Trends in International Mathematics and Science Study (TIMSS 2019) Pilot Test Recruitment

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 14, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0099. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Trends in International Mathematics and Science Study (TIMSS 2019) Pilot Test Recruitment.

OMB Control Number: 1850–0695.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 8,594.

Total Estimated Number of Annual Burden Hours: 2,190.

Abstract: The Trends in Mathematics and Science Study (TIMSS) is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years. The United States will participate in TIMSS 2019 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement. New in 2019, TIMSS will be a technology-based assessment conducted in an electronic format. TIMSS is designed by the International Association for the Evaluation of Educational Achievement (IEA), and is conducted in the U.S. by the National Center for Education Statistics (NCES). In preparation for the TIMSS 2019 main study, in April 2017, U.S. will participate in a pilot study to assist in the development of eTIMSS and, in March through April 2018, in a field test to evaluate new assessment items and background questions. The TIMSS 2019 Main Study data collection will take place from April through May 2019. This submission is to conduct the

TIMSS 2019 pilot test and to begin recruitment of schools, teachers, and students for the field test study. The pilot test data collection will begin in April 2017 and the recruitment for the field test in May 2017. Recruitment for the main study will begin in May of 2018 In May 2017, NCES will submit a request to conduct the 2018 field test and recruit schools for TIMSS 2019 Main Study.

Dated: September 8, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–21925 Filed 9–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0100]

Agency Information Collection Activities; Comment Request; Gainful Employment Disclosure Template

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection. In accordance with the requirements of § 668.412 of the Gainful Employment (GE) final regulations published in the **Federal Register** on October 31, 2014 (79 FR 64890), as corrected on December 4, 2014 (79 FR 71957), this collection describes the items that must be disclosed on the GE disclosure template.

DATES: Interested persons are invited to submit comments on or before November 14, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0100. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Gainful Employment Disclosure Template.

OMB Control Number: 1845–0107.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 27,944,411.

Total Estimated Number of Annual Burden Hours: 3,118,160.

Abstract: Under the new disclosure requirements, an institution must provide current and prospective students with information about each of its programs that prepares students for gainful employment in a recognized occupation (GE programs) using a disclosure template provided by the Secretary. The Secretary must specify the information to be included on the disclosure template in a notice published in the **Federal Register**. In accordance with the requirements of § 668.412 of the Gainful Employment (GE) final regulations published in the **Federal Register** on October 31, 2014 (79 FR 64890), as corrected on December 4, 2014 (79 FR 71957), this collection describes the items that must be disclosed on the GE disclosure template. This request revises the current information collection for the disclosure template to reflect the new disclosure requirements and provides notice of the information that institutions must disclose. The Department is further requesting that burden currently calculated for 1845–0107 be discharged and transfer the burden already calculated for § 668.412 regarding the GE disclosure requirements from 1845–0123 to this information collection.

Dated: September 8, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–21940 Filed 9–12–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the Office of Management and Budget (OMB) for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Loan Guarantees for Projects that Employ Innovative Technologies, OMB Control Number 1910–5134. The proposed collection will request information necessary to evaluate applications for loan guarantees submitted under Title XVII of the Energy Policy Act of 2005, as amended. Applications for loan guarantees submitted to DOE in response to a solicitation must contain certain information. This information will be used to analyze whether a project is eligible for a loan guarantee and to evaluate the application under criteria specified in DOE's regulations implementing Title XVII.

DATES: Comments regarding this collection must be received on or before October 13, 2016.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark S. Westergard, *LPO.PaperworkReductionAct.Comments@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No.: 1910–5134; (2) Information Collection Request Title: 10 CFR part 609—Loan Guarantees for Projects that Employ Innovative Technologies; (3) Type of Request: Extension; (4) Purpose: This information collection package covers collection of information necessary to evaluate applications for loan guarantees submitted under Title XVII of the Energy Policy Act of 2005, as amended, 42 U.S.C. 16511–16516. Applications for loan guarantees submitted to DOE in response to a solicitation must contain certain information. This information will be used to analyze whether a project is eligible for a loan guarantee and to evaluate the application under criteria specified in 10 CFR part 609; (5) Annual Estimated Number of Respondents: 100 Applications; (6) Annual Estimated Number of Total Responses: It is estimated that the total number of annual responses will not exceed 100; (7) Annual Estimated Number of Burden Hours: 13,000 hours, most of which is likely to be time committed by firms that seek debt and/or equity financing for their projects, regardless of their intent to apply for a DOE loan guarantee; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: It is estimated that the annual estimated reporting and recordkeeping cost burden for applicants will not exceed $25,000 per annum.

Statutory Authority: Title XVII of the Energy Policy Act of 2005 42 U.S.C. 16511–16516 authorizes the collection of information.

Issued in Washington, DC on September 7, 2016.

Mark A. McCall,

Executive Director, Department of Energy Loan Programs Office.

[FR Doc. 2016–21961 Filed 9–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will gather opinions of experts in industry and other organizations regarding the impact on the development and diffusion of energy-efficient technologies and techniques in the construction of residential buildings of DOE/EERE Building Technologies Office (BTO) investments. Expert opinions are necessary to characterize expected patterns of technology development and diffusion in the absence of DOE investments, and so (by comparing these expectations with actual observations) estimate the difference DOE investments have made. This information is needed by DOE for budget justification and strategic planning. Respondents will include representatives of production builder companies (including companies that received DOE R&D funding and companies that received no direct funding from DOE).

DATES: Comments regarding this collection must be received on or before October 13, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to: John Mayernik, By email to: *john.mayernik@ee.doe.gov,* or by mail to: Building Technologies Office, EE–5B, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John Mayernik, *john.mayernik@ee.doe.gov* or call 202–287–1754.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request Title: Surveys/Interviews to Gather Expert Opinion on the Impact of DOE/EERE Building Technologies Office Investments have had on the Development and Diffusion of Energy-Efficient Technologies and Techniques in the Construction of Residential Buildings; (3) Type of Request: New collection; (4) Purpose: The information collection will characterize expected patterns of technology development and diffusion in the absence of DOE investments, so that by comparing these expectations with actual observations the impacts of DOE investments can be estimated; this information is needed by DOE for budget justification and strategic planning. Respondents will include representatives of production builder companies (including companies that received DOE R&D funding and companies that received no direct funding from DOE); (5) Annual Estimated Number of Respondents: 104; (6) Annual Estimated Number of Total Responses: 104; (7) Annual Estimated Number of Burden Hours: 52; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: DOE Org Act (42 U.S.C. 7101, *et seq.*) and 42 U.S.C. 16191 (AMO authority).

Issued in Washington, DC on August 30, 2016.

David Nemtzow,

Director, Building Technologies Office.

[FR Doc. 2016–21962 Filed 9–12–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–144–000.
Applicants: Pioneer Wind Park I LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Pioneer Wind Park I, LLC.
Filed Date: 9/2/16.
Accession Number: 20160902–5202.
Comments Due: 5 p.m. ET 9/23/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–027.
Applicants: Merrill Lynch Commodities, Inc.
Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.
Filed Date: 9/6/16.
Accession Number: 20160906–5252.
Comments Due: 5 p.m. ET 9/27/16.

Docket Numbers: ER16–2544–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Interconnection Coordination Agreement SA No. 4531, Project No. b2633.2 to be effective 8/3/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5159.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2545–000.
Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.
Description: § 205(d) Rate Filing: 2016–09–02_SA 2945 ITC Midwest-Interstate Power & Light FSA (J233) to be effective 10/1/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5162.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2546–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement ACES Project to be effective 9/6/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5215.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2547–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: UAMPS E&P Agreement—Lehi to be effective 11/2/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5218.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2548–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Letter Agreement ACES Project—WDT 1430 Grapeland to be effective 9/6/2016.
Filed Date: 9/2/16
Accession Number: 20160902–5234.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2549–000.
Applicants: Pinetree Power-Tamworth, LLC.
Description: Compliance filing: Baseline Market-Based Rate Tariff to be effective 9/21/2016.
Filed Date: 9/2/16.
Accession Number: 20160902–5244.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2550–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Agreement, Service Agreement No. 329 of Pacific Gas and Electric Company.
Filed Date: 9/2/16.
Accession Number: 20160902–5258.
Comments Due: 5 p.m. ET 9/23/16.

Docket Numbers: ER16–2551–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Queue Position AA2–159, Original Service Agreement No. 4519 to be effective 8/4/2016.
Filed Date: 9/6/16.
Accession Number: 20160906–5277.
Comments Due: 5 p.m. ET 9/27/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–21919 Filed 9–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.http://ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP15–558–000	8–22–2016	Jill S. Dodds.
2. CP16–96–000	8–22–2016	Lidia E. Mino.
3. CP15–558–000	8–22–2016	Janice Zuzov.
4. CP15–558–000	8–23–2016	Jill S. Dodds.
Exempt:		
1. CP16–10–000	8–17–2016	U.S. Senator Mark R. Warner.
2. CP15–520–000	8–23–2016	FERC Staff.[1]
3. P–1494–000	8–25–2016	U.S. Senator James Lankford.
4. CP15–558–000	8–25–2016	State of New Jersey Assemblyman Erik Peterson.
5. CP15–554–000	8–25–2016	U.S. House Representative Bob Goodlatte.
6. CP16–9–000	8–25–2016	Town of Stoughton, Massachusetts Board of Selectmen.
7. CP15–558–000	8–30–2016	State of New Jersey Senator Shirley K. Turner.
8. CP13–83–000	8–30–2016	U.S. Senate.[2]
9. CP16–22–000	8–31–2016	FERC Staff.[3]
10. P–10810–000	8–31–2016	U.S. House Representative John Moolenaar.
11. CP16–22–000	9–1–2016	FERC Staff.[4]

[1] Memo reporting phone call on August 1, 2016 with James Taylor, Supervisor with the Township of Lenox.
[2] Senators Charles Schumer and Kirsten Gillibrand.
[3] Email dated July 21, 2016 with Jonathan Strong from Technology Engineering Group, LLC.
[4] Email dated August 22, 2016 with Leatra Harper from FreshWater Accountability Project.

Dated: September 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–21920 Filed 9–12–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2013–0565; FRL–9951–37–OEI]

Proposed Information Collection Request; Comment Request; Confidentiality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Confidentiality Rules (Renewal)" (EPA ICR No. 1665.13, OMB Control No. 2020–0003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 28, 2017. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 14, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2013–0565, online using *www.regulations.gov* (our preferred method), by email to *docket.oei@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Larry Gottesman, National Freedom of Information Act Officer, FOIA, Libraries and Accessibility Division, Office of Environmental Information, 2822T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–2162; *Gottesman.Larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In the course of administering environmental protection statutes, EPA collects data from "businesses" in many sectors of the U.S. economy. In many cases, "businesses" mark the data it submits to EPA as confidential business information (CBI). In addition, businesses submit information to EPA without the Agency requesting the information. EPA established the procedures described in 40 CFR part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (*e.g.,* in response to a FOIA request or in the course of rulemaking or litigation, a resubstantiation of a prior claim, or an advance confidentiality determination), it shall notify the affected business and provide an opportunity to submit a substantiation of confidentiality claims. This ICR relates to information EPA needs to collect to assist in determining whether previously submitted information is entitled to confidential treatment.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are businesses and other for-profit companies.

Respondent's obligation to respond: Required to obtain or retain a benefit, 5 U.S.C. Section 522 Freedom of Information Act.

Estimated number of respondents: 228 (total).

Frequency of response: 1 response per respondent annually.

Total estimated burden: 1,533 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $139,514 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

As part of the ICR renewal process, EPA is obtaining usage for the past 12 months of each of the letters covered by this ICR to obtain up-to-date estimates.

Larry F. Gottesman,

Agency FOIA Officer, Office of Environmental Information, Office of Enterprise Information Programs.

[FR Doc. 2016–21988 Filed 9–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9952–25–OA]

Notification of Two Public Teleconferences of the Science Advisory Board: Lake Erie Phosphorus Objectives Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Lake Erie Phosphorus Objectives Review Panel to review its draft report regarding the development of nutrient load reduction targets for Lake Erie.

DATES: The SAB Lake Erie Phosphorus Objectives Review Panel will conduct public teleconferences on October 12 and October 13, 2016. Each of the teleconferences will begin at 1:00 p.m. and end at 5:00 p.m. (Eastern Time).

ADDRESSES: The teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconferences may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone at (202) 564–2155 or via email at *armitage.thomas@epa.gov.* General information concerning the EPA SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Lake Erie Phosphorus Objectives Review Panel will hold two public teleconferences to discuss its draft report on the development of nutrient load reduction targets for Lake Erie. The Panel will provide advice to the Administrator through the chartered SAB.

EPA Region 5 is co-leading a binational workgroup to develop and implement the Nutrients Annex (“Annex 4”) of the 2012 Great Lakes Water Quality Agreement (GLWQA) in accordance with Article 3(b)(i) of the GLWQA. Under Annex 4, the United States and Canada were charged with establishing binational Substance Objectives for phosphorus concentrations, loading targets, and allocations for the nearshore and offshore waters of Lake Erie. The EPA Region 5 Water Division requested that the SAB review modeling results that informed the development of the binational phosphorus reduction targets. The EPA also requested advice on future work to support implementation and evaluation of nutrient reduction goals for Lake Erie. The SAB Panel reviewed the documents titled *Annex 4 Ensemble Modeling Report and Appendix B,* and *Recommended Phosphorus Loading Targets for Lake Erie.* The SAB Panel met on June 21–22, 2016 to receive briefings from the EPA and invited experts, hear public comments, and deliberate on responses to the EPA charge questions (81 FR 31936). The purpose of the teleconferences described in this notice is to discuss the Panel's draft report. The two panel teleconferences will be conducted as one complete meeting beginning on October 12, 2016 and continuing on October 13, 2016, if needed to complete agenda items. Additional information about this SAB advisory activity can be found at the following URL *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/GLWQA%20Annex%204?OpenDocument.*

Technical Contacts: Any technical questions concerning work conducted under the GLWQA Annex 4 and the documents reviewed by the SAB should be directed to Ms. Santina Wortman, Water Division, U.S. EPA Region 5, 77 West Jackson Boulevard (WW–15J), Chicago, Illinois 60604, by telephone (312) 353–8319 or via email at *wortman.santina@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the teleconference agenda, draft panel report, and other materials will be available on the SAB Web site at *http://www.epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees and panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at the teleconference will be limited to three minutes. Interested parties wishing to provide comments should contact Dr. Armitage, DFO, in writing (preferably via email) at the contact information noted above by October 5, 2016, to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements will be accepted throughout the advisory process; however, for timely consideration by Panel members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by October 5, 2016. It is the SAB Staff Office general policy to post written comments on the Web page for advisory meetings. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the contact information provided above. To request accommodation of a disability, please contact Dr. Armitage preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 7, 2016.

Khanna Johnston,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2016–21989 Filed 9–12–16; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—extension without change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the Local Union Report (EEO–3) (Form 274). Pending OMB approval of an emergency extension request, to be effective after the current September 30, 2016 expiration date, a regular clearance request for OMB review and approval of a three-year extension of the EEO–3 Report is beginning.

DATES: Written comments on this notice must be submitted on or before November 14, 2016.

ADDRESSES: Comments should be sent to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("FAX") machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide, except as noted below. The EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters' Library, 131 M Street NE., Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 131 M Street NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Local referral unions with 100 or more members.

Description of Affected Public: Local referral unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,036.

Biennial Reporting Hours: 2,123.8.

Biennial Burden Hour Cost: $87,588.10.

Biennial Federal Cost: $81,935.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring local referral unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.

Burden Statement: The EEOC has updated its methodology for calculating annual burden to reflect the different staff that are responsible for preparing and filing the EEO–3. The EEOC now accounts for time to be spent biennially on EEO–3 reporting by business agents and administrative staff, as well as time spent by attorneys who, in a few cases, may consult briefly during the reporting process. The estimated number of respondents included in the biennial EEO–3 survey is 1,036 referral unions, as this is the number of filers from the 2014 reporting cycle. The estimated hour burden per report will be 2.05 hours, and the estimated total biennial respondent burden hours will be 2,123.8. Burden hour cost was calculated using median hourly wage rates for administrative staff and legal counsel, and average hourly wage rates for labor union business agents.[1] The burden hour cost per report will be $84.54, and the estimated total biennial burden hour cost will be $87,588.10. (See Table 1 for calculations.)

TABLE 1—UPDATED ESTIMATE OF BURDEN FOR EEO–3 REPORT

Local referral union staff	Hourly wage rate	Hours per local	Cost per local	Total burden hours	Total burden hour cost
Secretaries and administrative assistants	$17.55	1	$17.55	1036	$18,181.80
Business agent	64.21	1	64.21	1036	66,521.56
Corporate legal counsel	55.69	0.05	2.7845	51.8	2,884.74
Total		2.05	84.5445	2,123.8	87,588.10

These estimates are based on an assumption of paper reporting. However, the EEOC has made electronic filing much easier for respondents required to file the EEO–3 Report. As a result, more respondents are using this filing method. This development, along with the greater availability of human resource information software, is expected to significantly reduce the actual burden of reporting. The Commission continues to develop more reliable estimates of reporting burdens given the significant increase in electronic filing and explore new approaches to make such reporting even less burdensome. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: September 2, 2016.

For the Commission.

Jenny R. Yang,

Chair.

[FR Doc. 2016–21892 Filed 9–12–16; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 12–268; AU Docket No. 14–252; WT Docket No. 12–269; DA 16–990]

Clearing Target of 114 Megahertz Set for Stage 2 of the Broadcast Television Spectrum Incentive Auction; Stage 2 Bidding in the Reverse Auction Will Start on September 13, 2016

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Incentive Auction Task Force and Wireless Telecommunications Bureau announce the spectrum clearing target of 114 megahertz and band plan for Stage 2 of the incentive auction and that bidding in Stage 2 of the reverse auction is scheduled to begin on September 13, 2016. Also announces details and dates regarding bidding and the availability of educational and informational materials for reverse and forward auction bidders eligible to participate in Stage 2; the availability of Stage 2 bidding and timing information in the Incentive Auction Public Reporting System; and the importance of bidder contingency plans and reminds each reverse and forward auction applicant of its continuing obligations under the FCC's rules.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general auction questions, contact Linda Sanderson at (717) 338–2868. For reverse auction or forward auction legal questions, refer to the contact information listed in the *Incentive Auction Stage 2 Clearing Target Public Notice.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Incentive Auction Stage 2 Clearing Target Public Notice,* GN Docket No. 12–268, AU Docket No. 14–252, WT Docket No. 12–269, DA 16–990, released August 31, 2016. The complete text of the *Incentive Auction Stage 2 Clearing Target Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* the Auction 1000 Web site at *http://www.fcc.gov/auctions/1000,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Incentive Auction Task Force (Task Force) and the Wireless Telecommunications Bureau (Bureau) announce the 114 megahertz spectrum clearing target that has been set by the Auction System's optimization procedure and the associated band plan for Stage 2 of the incentive auction, as well as the number of Category 1 and Category 2 generic license blocks in each Partial Economic Area (PEA) that will be offered in Stage 2 of the forward auction. The Task Force and Bureau also provide details and specific dates regarding bidding and the availability of educational materials and remind reverse and forward auction applicants of their continuing obligations.

I. Stage 2 Clearing Target and Band Plan

2. Auction System's clearing target determination procedure has set a spectrum clearing target of 114 megahertz for Stage 2 of the incentive auction. Under the band plan associated with this spectrum clearing target, 90 megahertz, or 90 paired blocks, of licensed spectrum will be offered in the

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[1] Median hourly wage rates for administrative staff and legal counsel were obtained from the Bureau of Labor Statistics (see U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, http://www/bls.gov/ooh/*) and the average hourly wage rate for a labor union business agent was obtained from *salaryexpert.com* (see *https://www.salaryexpert.com/salarysurveydata/job=labor-union-business-agent/salary*).

forward auction on a near-nationwide basis.

3. The generic license blocks offered in Stage 2 of the forward auction under this band plan will consist of a total of 3688 Category 1 blocks (zero to 15 percent impairment) and a total of five Category 2 blocks (greater than 15 percent and up to 50 percent impairment). Approximately 99.9 percent of the blocks offered will be Category 1 blocks, and 99.8 percent of the Category 1 blocks will be zero percent impaired. Attached to the *Incentive Auction Stage 2 Clearing Target Public Notice* as Appendix A is a list indicating the number of Category 1 and Category 2 blocks available in each PEA.

4. The clearing target for Stage 2 was determined by the procedure the Commission adopted in the *Auction 1000 Bidding Procedures Public Notice,* 80 FR 61917, October 14, 2015, using the same objectives as in the initial clearing target optimization and taking into account the additional channel in the TV band and any participating stations that have dropped out of the auction in the previous stage. Based on the new provisional television channel assignment plan, the nationwide impaired weighted-pops were calculated on a 2x2 cell level and the one-block-equivalent nationwide standard for impairments was applied.

II. Important Information Concerning the Reverse Auction (Auction 1001)

5. *Online Stage 2 Tutorial.* The Task Force and Bureau will make available an online tutorial on bidding procedures specific to Stage 2 of the reverse auction (and any subsequent stage, if necessary) on Thursday, September 1, 2016. This new tutorial will be accessible from the Auction 1001 Web site through a link under the "Education" section. Once posted, it will remain available and accessible on the Auction 1001 Web site for reference.

6. *Accessing the Auction System for Stage 2.* Starting at 10:00 a.m. Eastern Time (ET) on Wednesday, September 7, 2016, any bidder that had one or more stations with the status "Frozen—Provisionally Winning" at the end of the previous stage can log in to the Reverse Auction Bidding System for Stage 2 and view the bidding status, and, where applicable, the following information for round 1 of the new stage for each of the bidder's stations that qualified to participate in the clock rounds of the reverse auction: Initial bid option, available bid options, vacancy ranges, and clock price offers.

7. A bidder will need to use the RSA SecurID® tokens (RSA tokens) it used for placing bids in the previous stage to access the Reverse Auction Bidding System for Stage 2. RSA tokens with previously set personal identification numbers (PINs) may be used without setting a new PIN. Any authorized bidder that has not already set a PIN for his or her designated RSA token (*e.g.,* an authorized bidder recently identified on Form 177 or one using a replacement RSA token) must set a PIN as described in the materials sent with the Second Confidential Status Letter. Each bidder will be able to access the Reverse Auction Bidding System at the same web address used during the previous stage. In addition, the FCC Auction Bidder Line phone number for Stage 2 will be the same number used for the previous stage.

8. *Returning RSA Tokens.* Each bidder that did not have any stations with the status "Frozen—Provisionally Winning" at the end of the previous stage will be sent a pre-addressed, stamped envelope to return its RSA tokens.

9. *Clocks Rounds Start Date and Round Schedule.* Bidding in the clock rounds of Stage 2 of Auction 1001 will begin on Tuesday, September 13, 2016, on the following schedule: Bidding Round (10:00 a.m.–2:00 p.m. ET). Starting on Wednesday, September 14, 2016, and continuing until further notice, the schedule will be: Bidding Round (10:00 a.m.–12:00 p.m. ET) and Bidding Round (3:00 p.m.–5:00 p.m. ET). The Bureau may adjust the number and length of bidding rounds based upon its monitoring of the bidding and assessment of the reverse auction's progress. The Bureau will provide notice of any adjustment by announcement in the Reverse Auction Bidding System during the course of the auction.

10. *Reset Base Clock Price and Clock Decrement for Round 1 of Stage 2.* The base clock price has been reset to $900 per unit of volume for Stage 2 of the reverse auction. The price decrement for round 1 of Stage 2 of the reverse auction will be five percent of the reset base clock price.

III. Important Information Concerning the Forward Auction (Auction 1002)

11. *Bidding in Stage 2.* Bidding in the clock phase of Stage 2 of the forward auction will begin on the next business day after the close of bidding in Stage 2 of the reverse auction. The schedule for bidding in Stage 2 of the forward auction will be announced in the Forward Auction Bidding System and in the Incentive Auction Public Reporting System (PRS). The PRS can be accessed directly at *auctiondata.fcc.gov* and from a link under the Results section of the Auction 1001 Web site (*www.fcc.gov/auctions/1001*) and the Auction 1002 Web site (*www.fcc.gov/auction/1002*).

12. *Accessing the Forward Auction Bidding System in Stage 2.* Any bidder that is eligible to bid in Stage 2 of the forward auction will be able to access the Forward Auction Bidding System beginning at 10:00 a.m. ET on Thursday, September 8, 2016, using the same RSA tokens, web address, and instructions provided in the bidder registration materials from Stage 1 of the forward auction. Any bidder with zero eligibility by the end of Stage 1 will not be eligible to bid in Stage 2 of the forward auction. Upon logging in to the Forward Auction Bidding System, an eligible bidder can download detailed impairment information for Stage 2, as well as the stage transition files. The detailed impairment information and bidder-specific information, including stage transition files and Stage 1 bidding information, are non-public and are provided only to eligible bidders to help guide their bidding in Stage 2 of the forward auction. This information will not be disclosed publicly until after the auction concludes.

13. *Returning RSA Tokens.* Each bidder that is no longer eligible to participate in the forward auction (*i.e.,* any bidder that has zero eligibility by the end of Stage 1) will be sent a pre-addressed, stamped envelope to return its RSA tokens.

14. *Rule for Round 1 of Stage 2.* Starting in the first round of Stage 2, each bidder must be active on at least 95 percent of its bidding eligibility to maintain its bidding eligibility for the next round. Any changes to the activity requirement in subsequent rounds will be announced via the Forward Auction Bidding System. Prior to the start of Stage 2 of the forward auction, a bidder may view its initial eligibility and required activity for round 1 by downloading the My Bidder Status file under the Bid/Status tab.

15. *Clock Increment for Round 1 of Stage 2.* An increment of five percent will be used to set clock prices for products in round 1 of Stage 2 of the forward auction. Prior to the announcement of the forward auction bidding schedule for Stage 2, a bidder may view the clock prices for round 1 by downloading the Sample Bids file in the Forward Auction Bidding System.

IV. Public Reporting System

16. As was the case for Stage 1 of the incentive auction, publicly available bidding and timing information for Stage 2 of the reverse auction and the forward auction will be accessible through the PRS. The PRS will display

the same types of bidding and other information for Stage 2 as was available for Stage 1. For more information about the types of bidding and other information available in the PRS, please see the *Public Reporting System Public Notice.*

V. Bidding Contingency Plan

17. The Task Force and Bureau remind each bidder that it should develop a comprehensive contingency plan that can be quickly implemented in case difficulties arise when participating in the incentive auction. While the Commission will correct any problems with Commission-controlled facilities, each bidder is solely responsible for anticipating and overcoming problems such as bidder computer failures or other technical issues, loss of or problems with data connections (including those used to access and place bids in the Reverse Auction Bidding System or the Forward Auction Bidding System), telephone service interruptions, adverse local weather conditions, unavailability of its authorized bidders, or the loss or breach of confidential security codes.

18. A bidder should ensure that each of its authorized bidders can access and place bids in the Reverse Auction Bidding System or Forward Auction Bidding System, and it should not rely upon the same computer or data connection to do so. Contingency plans will ideally include arrangements for accessing and placing bids in the Reverse Auction Bidding System or the Forward Auction Bidding System from one or more alternative locations. A bidder's contingency plan might also include, among other arrangements, calling the Auction Bidder Line.

19. Each reverse auction bidder is further reminded that a failure to submit a bid for a station with the status "Bidding" is considered to be a missing bid, and the Reverse Auction Bidding System will automatically submit a bid to drop out of the auction for all stations with missing bids. The status of a station that bids to drop out of the auction will be "Exited—Voluntarily" once bid processing is complete for the round (unless the station first becomes frozen). Once a station has the status "Exited," a bidder cannot bid for the station in any subsequent round or stage.

20. Each forward auction bidder is reminded that its failure to submit a bid during a clock round will be considered a missing bid and will be treated as a bid for zero blocks, at the lowest price in the price range for the round, for any products in which the bidder had processed demand from the previous round. If there is insufficient excess demand, the "missing" bid may be partially applied or not applied at all and the bidder will continue to have processed demand for the product in the next round. If the "missing" bid is partially or fully applied, that bidder's eligibility may be irrevocably reduced in the next round.

VI. Continuing Obligations

21. *Due Diligence.* The Task Force and Bureau remind each reverse and forward auction bidder that it is solely responsible throughout the auction for investigating and evaluating all legal, technical, and marketplace factors and risks that may have a bearing on the bid(s) it submits in the incentive auction. For more information, each bidder should review the *Auction 1000 Application Procedures Public Notice,* 80 FR 66429, October 29, 2015.

22. *Prohibited Communications Reminder.* The Task Force and Bureau remind all full power and Class A broadcast television licensees, as well as forward auction applicants, that they remain subject to the Commission's rules prohibiting certain communications in connection with Commission auctions. For communications among broadcasters, and between broadcasters and forward auction applicants, the prohibited communication period ends when the results of the incentive auction are announced by public notice. For communications among forward auction applicants, the period ends on the deadline for making down payments on winning bids. A party that is subject to the prohibition remains subject to the prohibition regardless of developments during the auction process.

23. The Task Force and Bureau further remind each full power and Class A broadcast television licensee that even though communicating whether or not a party filed an application to participate in the reverse auction does not violate the rules prohibiting certain communications, communicating that a party "is not bidding" in or has "exited" the reverse auction could constitute an apparent violation that needs to be reported. All forward auction applicants, including those that did not qualify to bid and those that have since lost eligibility to bid in the forward auction, are also reminded that they remain subject to the rules prohibiting certain communications until the deadline for making down payments on winning bids.

24. The Commission's rules require covered parties to report violations of the prohibition of certain communications to Margaret W. Wiener, Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener at the following email address: *auction1000@fcc.gov.* Any report in hard copy must be delivered only to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Room 6–C217, Washington, DC 20554. Failure to make a timely report under the rule constitutes a continuing violation of the rule, with attendant consequences.

25. For a thorough discussion of the prohibition of certain communications during the incentive auction, please refer to the *Prohibited Communications Public Notice,* 80 FR 63216, October 19, 2015.

26. *Making Modifications to Applications.* The Task Force and Bureau remind each reverse and forward auction applicant that the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its application to participate in Auctions 1001 and 1002, respectively. Each applicant should amend its application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment. Any applicant that needs to make changes must do so using the procedures described in the *Auction 1000 Application Procedures Public Notice* and the *Auction 1002 Qualified Bidders Public Notice.*

27. To make changes to an FCC Form 177 or FCC Form 175 while the Auction System is available, the applicant must make those changes electronically using the Auction System and submit a letter briefly summarizing the changes to its FCC Form 177 by email to *auction1001@fcc.gov,* or to its FCC Form 175 by email to *auction1002@fcc.gov.* To make changes at a time when the Auction System is unavailable, the applicant must make those changes using the procedures described in the *Auction 1000 Application Procedures Public Notice.*

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–22105 Filed 9–9–16; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission

DATE & TIME: Thursday, September 15, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for July 14, 2016
Correction and Approval of Minutes for August 16, 2016
REG 2014–10: Implementing the Consolidated and Further Continuing Appropriations Act, 2015
REG 2016–03: Political Party Rules
REG 2013–01: Draft Notice of Proposed Rulemaking on Technological Modernization
Request for Guidance on Interpretation of Conciliation Agreement in MUR 5635 (The Viguerie Company, et al.)
Proposal to Rescind Advisory Opinion 2006–15 (TransCanada)
Audit Division Recommendation Memorandum on the Utah Republican Party (URP) (A13–06)
Proposal to Launch Rulemaking to Ensure that U.S. Political Spending is Free from Foreign Influence
Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202)694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–22039 Filed 9–9–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2016–N–06]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning the currently-approved information collection known as the "National Survey of Mortgage Originations" (NSMO), which has been assigned control number 2590–0012 by the Office of Management and Budget (OMB) (the collection was previously known as the "National Survey of Mortgage Borrowers"). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on December 31, 2016.

DATES: Interested persons may submit comments on or before November 14, 2016.

ADDRESSES: Submit comments to FHFA, identified by "Proposed Collection; Comment Request: 'National Survey of Mortgage Originations, (No. 2016–N–06)' " by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: "National Survey of Mortgage Originations, (No. 2016–N–06)."

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Forrest Pafenberg, Supervisory Economist, Office of the Chief Operating Officer, by email at *Forrest.Pafenberg@fhfa.gov* or by telephone at (202) 649–3129; or Eric Raudenbush, Associate General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

The NSMO is a recurring quarterly survey of individuals who have recently obtained a loan secured by a first mortgage on single-family residential property. The survey questionnaire is sent to a representative sample of approximately 6,000 recent mortgage borrowers each calendar quarter and typically consists of between 90 and 95 multiple choice and short answer questions designed to obtain information about borrowers' experiences in choosing and in taking out a mortgage. The questionnaire may be completed either on paper or electronically online, where it is available in both English and Spanish. A copy of the most recent NSMO questionnaire appears at the end of this document.[1]

The NSMO is one component of a larger project, known as the "National Mortgage Database" (NMDB) Project, which is a multi-year joint effort of FHFA and the Consumer Financial Protection Bureau (CFPB) (although the NSMO is sponsored only by FHFA). The NMDB Project was created, in part, to satisfy the Congressionally-mandated requirements of section 1324(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008 (Safety and Soundness Act).[2] Section 1324(c) requires that FHFA conduct a monthly survey to collect data on the characteristics of individual prime and subprime mortgages, and on the borrowers and properties associated with those mortgages, in order to enable it to prepare a detailed annual report on the mortgage market activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for review by the appropriate Congressional oversight committees. Section 1324(c) also authorizes and requires FHFA to compile a database of timely and otherwise unavailable residential mortgage market information to be made available to the public.

In order to fulfill those and other statutory mandates, as well as to support policymaking and research efforts, FHFA and CFPB committed in July 2012 to fund, build and manage the NMDB Project. The core data in the NMDB are drawn from a random 1-in-20 sample of all closed-end first-lien mortgages outstanding at any time between January 1998 and the present in the files of Experian, one of the three national credit repositories. A random 1-in-20 sample of mortgages newly reported to Experian is added to the NMDB each quarter. The NMDB also draws information on mortgages in the NMDB datasets from other existing sources, including the Home Mortgage Disclosure Act (HMDA) database that is maintained by the Federal Financial Institutions Examination Council (FFIEC), property valuation models, data files maintained by Fannie Mae and Freddie Mac and by federal agencies, and the NSMO and other surveys.[3] When fully complete, the NMDB will be a de-identified loan-level database of closed-end first-lien residential mortgages that: Is representative of the market as a whole; contains detailed, loan-level information on the terms and performance of mortgages, as well as characteristics of the associated borrowers and properties; is continually updated; has an historical component dating back to 1998; and provides a sampling frame for surveys to collect additional information.

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[1] Fully formatted copies of the questionnaire in both English and Spanish can be accessed online at: *http://www.fhfa.gov/Homeownersbuyer/Pages/National-Survey-of-Mortgage-Originations.aspx.*

[2] 12 U.S.C. 4544(c).

FHFA views the NMDB Project as a whole, including the NSMO, as the monthly "survey" required by section 1324(c) of the Safety and Soundness Act. Core inputs to the NMDB, such as a regular refresh of the credit repository data, occur monthly, though NSMO itself does not. In combination with the other information in the NMDB, the information obtained through the NSMO is also used: (1) To prepare the report to Congress on the mortgage market activities of Fannie Mae and Freddie Mac that FHFA is required to submit under section 1324(c); (2) for research and analysis to support policymaking by FHFA and other federal regulators; and (3) to provide a resource for research and analysis by academics and other interested parties outside of the government. Generally, the information collected will enable regulators and other interested parties to more effectively monitor emerging trends in the mortgage origination process throughout the United States and will allow them to determine more quickly and accurately when the mortgage origination process is changing in a way that is unfavorable to borrowers and consumers.

In particular, the NSMO provides timely information on newly-originated mortgages and those borrowing that is not available from existing sources, including: The range of nontraditional and subprime mortgage products being offered, the methods by which these mortgages are being marketed, and the characteristics of borrowers for these types of loans. The survey is critical to ensuring that the NMDB contains complete and timely information on the characteristics of individual subprime and nontraditional mortgages and on the characteristics of borrowers on such mortgages, including information on the creditworthiness of those borrowers and information sufficient to determine whether those borrowers would have qualified for prime lending. The NSMO questionnaire is designed to elicit this information directly from borrowers, who are likely to be the most reliable and accessible—and, in some cases, the only—source for this information. The questionnaire focuses on topics such as mortgage shopping behavior, mortgage closing experiences, and other information that cannot be obtained from any other source, such as expectations regarding house price appreciation, critical household financial events, and life events such as unemployment, large medical expenses, or divorce. In general, borrowers are not asked to provide information about mortgage terms in the questionnaire since these fields are available in the Experian data. However, the survey collects a limited amount of information on each respondent's mortgage to verify that the credit repository records and survey responses pertain to the same mortgage.

FHFA is also seeking clearance to pre-test the survey questionnaire and related materials from time to time through the use of cognitive testing. FHFA will use information collected through the cognitive testing to assist in drafting and modifying the survey questions and instructions, as well as the related communications, to read in the way that will be most readily understood by the survey respondents and that will be most likely to elicit usable responses. Such information will also be used help the Agency decide on how best to organize and format the survey questionnaires.

The OMB control number for the information collection is 2590–0012. The current clearance for the information collection expires on December 31, 2016.

B. Burden Estimate

FHFA has analyzed the hour burden on members of the public associated with conducting the survey (12,000 hours) and with pre-testing the survey materials (30 hours) and estimates the total annual hour burden imposed on the public by this information collection to be 12,030 hours. The estimate for each phase of the collection was calculated as follows:

I. Conducting the Survey

FHFA estimates that the NSMO questionnaire will be sent to 24,000 recipients annually (6,000 recipients per quarterly survey × 4 calendar quarters). Although, based on historical experience, the Agency expects that only 30 to 35 percent of those surveys will be returned, it has assumed that all of the surveys will be returned for purposes of this burden calculation. Based on the reported experience of respondents to prior NSMO questionnaires, FHFA estimates that it will take each respondent 30 minutes to complete the survey, including the gathering of necessary materials to respond to the questions. This results in a total annual burden estimate of 12,000 hours for the survey phase of this collection (24,000 respondents × 30 minutes per respondent = 12,000 hours annually).

II. Pre-Testing the Materials

FHFA estimates that it will pre-test the survey materials with 30 cognitive testing participants annually. The estimated participation time for each participant is one hour, resulting in a total annual burden estimate of 30 hours for the pre-testing phase of the collection (30 participants × 1 hour per participant = 30 hours annually).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

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[3] In addition to the NSMO, FHFA has recently begun to collect data through a new survey called the American Survey of Mortgage Borrowers (ASMB). While the NSMO solicits information about the experiences of borrowers who have recently obtained a mortgage, the ASMB solicits information on borrowers' experience with maintaining their existing mortgages. OMB has cleared the ASMB under the PRA and assigned it control no. 2590–0015, which expires on July 31, 2019.

Dated: September 7, 2016.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

BILLING CODE 8070-01-P

Tell us about your recent mortgage experience

A nationwide survey of mortgage borrowers throughout the United States

LOAN SHOPPING
LOAN QUALIFYING
A NEW LOAN
A REFINANCE

Learning directly from borrowers, like you, about your experiences will help us improve lending practices and the mortgage process for future borrowers.

Two Federal agencies, The Federal Housing Finance Agency and the Consumer Financial Protection Bureau are working together on your behalf to improve the safety of the U.S. housing finance system and ensure all consumers have access to financial products and services.

We want to make it as easy as possible for you to complete this survey. You can mail back the paper survey in the enclosed business reply envelope OR complete the survey online.

The online version of the questionnaire may be easier, and faster, to complete, because it automatically skips any questions that don't apply to you.

To take the survey online

1 **GO TO www.NSMOsurvey.com**

2 **LOG IN with your unique survey PIN # found in the accompanying letter**

Esta encuesta está disponible en español en linea

1 *Visite al sitio web **www.NSMOsurvey.com***

2 *Inicie la sesión con su número PIN único de la encuesta que se encuentra en la carta adjunta.*

Thanks so much for your help with this important national effort to improve people's experiences in financing home ownership.

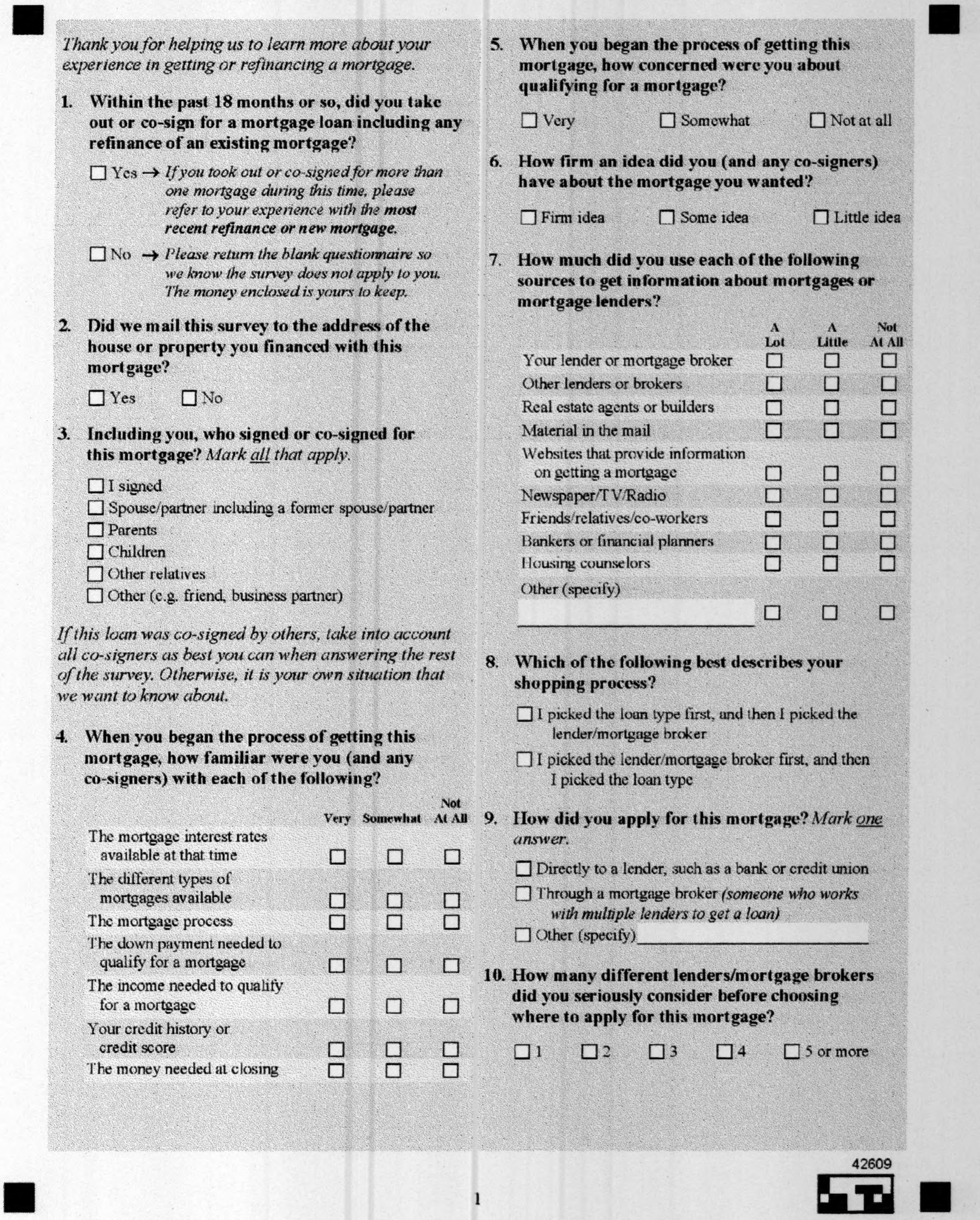
We are interested in learning about your experience purchasing or refinancing either a personal home or a home for someone else, including rental property.

We look forward to hearing from you.

Privacy Act Notice: In accordance with the Privacy Act, as amended (5 U.S.C. § 552a), the following notice is provided. The information requested on this Survey is collected pursuant to 12 U.S.C. 4544 for the purposes of gathering information for the National Mortgage Database. Routine uses which may be made of the collected information can be found in the Federal Housing Finance Agency's System of Records Notice (SORN) FHFA-21 National Mortgage Database. Providing the requested information is voluntary. Submission of the survey authorizes FHFA to collect the information provided and to disclose it as set forth in the referenced SORN.

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB No. 2590-0012
Expires 12/31/2016



Thank you for helping us to learn more about your experience in getting or refinancing a mortgage.

1. **Within the past 18 months or so, did you take out or co-sign for a mortgage loan including any refinance of an existing mortgage?**

☐ Yes → *If you took out or co-signed for more than one mortgage during this time, please refer to your experience with the* ***most recent refinance or new mortgage.***

☐ No → *Please return the blank questionnaire so we know the survey does not apply to you. The money enclosed is yours to keep.*

2. **Did we mail this survey to the address of the house or property you financed with this mortgage?**

☐ Yes ☐ No

3. **Including you, who signed or co-signed for this mortgage?** *Mark all that apply.*

☐ I signed
☐ Spouse/partner including a former spouse/partner
☐ Parents
☐ Children
☐ Other relatives
☐ Other (e.g. friend, business partner)

If this loan was co-signed by others, take into account all co-signers as best you can when answering the rest of the survey. Otherwise, it is your own situation that we want to know about.

4. **When you began the process of getting this mortgage, how familiar were you (and any co-signers) with each of the following?**

	Very	Somewhat	Not At All
The mortgage interest rates available at that time	☐	☐	☐
The different types of mortgages available	☐	☐	☐
The mortgage process	☐	☐	☐
The down payment needed to qualify for a mortgage	☐	☐	☐
The income needed to qualify for a mortgage	☐	☐	☐
Your credit history or credit score	☐	☐	☐
The money needed at closing	☐	☐	☐

5. **When you began the process of getting this mortgage, how concerned were you about qualifying for a mortgage?**

☐ Very ☐ Somewhat ☐ Not at all

6. **How firm an idea did you (and any co-signers) have about the mortgage you wanted?**

☐ Firm idea ☐ Some idea ☐ Little idea

7. **How much did you use each of the following sources to get information about mortgages or mortgage lenders?**

	A Lot	A Little	Not At All
Your lender or mortgage broker	☐	☐	☐
Other lenders or brokers	☐	☐	☐
Real estate agents or builders	☐	☐	☐
Material in the mail	☐	☐	☐
Websites that provide information on getting a mortgage	☐	☐	☐
Newspaper/TV/Radio	☐	☐	☐
Friends/relatives/co-workers	☐	☐	☐
Bankers or financial planners	☐	☐	☐
Housing counselors	☐	☐	☐
Other (specify) ____________	☐	☐	☐

8. **Which of the following best describes your shopping process?**

☐ I picked the loan type first, and then I picked the lender/mortgage broker
☐ I picked the lender/mortgage broker first, and then I picked the loan type

9. **How did you apply for this mortgage?** *Mark one answer.*

☐ Directly to a lender, such as a bank or credit union
☐ Through a mortgage broker *(someone who works with multiple lenders to get a loan)*
☐ Other (specify) ____________

10. **How many different lenders/mortgage brokers did you seriously consider before choosing where to apply for this mortgage?**

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

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11. How many different lenders/mortgage brokers did you end up applying to?

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 or more

12. Did you apply to more than one lender/ mortgage broker for any of the following reasons?

	Yes	No
Searching for better loan terms	☐	☐
Concern over qualifying for a loan	☐	☐
Information learned from the "Loan Estimate"	☐	☐
Turned down on earlier application	☐	☐

13. How important were each of the following in choosing the lender/mortgage broker you used for the mortgage you took out?

	Important	Not Important
Having an established banking relationship	☐	☐
Having a local office or branch nearby	☐	☐
Used previously to get a mortgage	☐	☐
Lender/mortgage broker is a personal friend or relative	☐	☐
Lender/mortgage broker operates online	☐	☐
Recommendation from a friend/ relative/co-worker	☐	☐
Recommendation from a real estate agent/home builder	☐	☐
Reputation of the lender/mortgage broker	☐	☐
Spoke my primary language, which is not English	☐	☐

14. Who initiated the first contact between you and the lender/mortgage broker you used for the mortgage you took out?

☐ I (or one of my co-signers) did
☐ The lender/mortgage broker did
☐ We were put in contact by a third party *(such as a real estate agent or home builder)*

15. How open were you to suggestions from your lender/mortgage broker about mortgages with different features or terms?

☐ Very ☐ Somewhat ☐ Not at all

16. How important were each of the following in determining the mortgage you took out?

	Important	Not Important
Lower interest rate	☐	☐
Lower APR *(Annual Percentage Rate)*	☐	☐
Lower closing fees	☐	☐
Lower down payment	☐	☐
Lower monthly payment	☐	☐
An interest rate fixed for the life of the loan	☐	☐
A term of 30 years	☐	☐
No mortgage insurance	☐	☐

17. Was the "Loan Estimate" you received from your lender/mortgage broker...

	Yes	No
Easy to understand	☐	☐
Valuable information	☐	☐

18. Did the "Loan Estimate" lead you to...

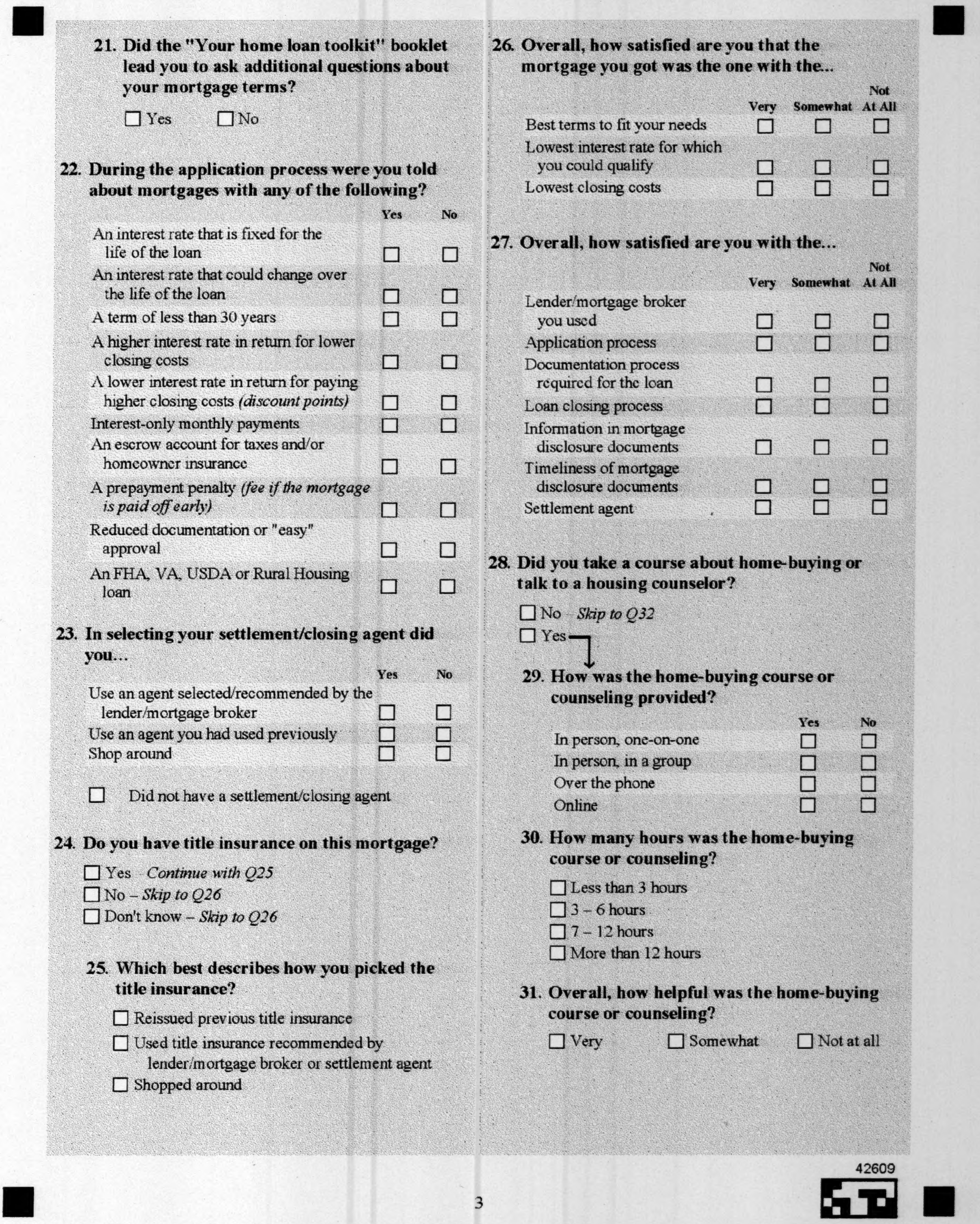
	Yes	No
Ask questions of your lender/mortgage broker	☐	☐
Seek a change in your loan or closing	☐	☐
Apply to a different lender/mortgage broker	☐	☐

19. In the process of getting this mortgage from your lender/mortgage broker, did you...

	Yes	No
Have to add another co-signer to qualify	☐	☐
Resolve credit report errors or problems	☐	☐
Answer follow-up requests for more information about income or assets	☐	☐
Have more than one appraisal	☐	☐
Redo/refile paperwork due to processing delays	☐	☐
Delay or postpone closing date	☐	☐
Have your "Loan Estimate" revised to reflect changes in your loan terms	☐	☐
Check other sources to confirm that terms of this mortgage were reasonable	☐	☐

20. Your lender may have given you a booklet "Your home loan toolkit: A step-by-step guide", do you remember receiving a copy?

☐ Yes – *Continue with Q21*
☐ No – *Skip to Q22*
☐ Don't know – *Skip to Q22*



21. Did the "Your home loan toolkit" booklet lead you to ask additional questions about your mortgage terms?

☐ Yes ☐ No

22. During the application process were you told about mortgages with any of the following?

	Yes	No
An interest rate that is fixed for the life of the loan	☐	☐
An interest rate that could change over the life of the loan	☐	☐
A term of less than 30 years	☐	☐
A higher interest rate in return for lower closing costs	☐	☐
A lower interest rate in return for paying higher closing costs *(discount points)*	☐	☐
Interest-only monthly payments	☐	☐
An escrow account for taxes and/or homeowner insurance	☐	☐
A prepayment penalty *(fee if the mortgage is paid off early)*	☐	☐
Reduced documentation or "easy" approval	☐	☐
An FHA, VA, USDA or Rural Housing loan	☐	☐

23. In selecting your settlement/closing agent did you…

	Yes	No
Use an agent selected/recommended by the lender/mortgage broker	☐	☐
Use an agent you had used previously	☐	☐
Shop around	☐	☐

☐ Did not have a settlement/closing agent

24. Do you have title insurance on this mortgage?

☐ Yes *Continue with Q25*
☐ No – *Skip to Q26*
☐ Don't know – *Skip to Q26*

25. Which best describes how you picked the title insurance?

☐ Reissued previous title insurance
☐ Used title insurance recommended by lender/mortgage broker or settlement agent
☐ Shopped around

26. Overall, how satisfied are you that the mortgage you got was the one with the…

	Very	Somewhat	Not At All
Best terms to fit your needs	☐	☐	☐
Lowest interest rate for which you could qualify	☐	☐	☐
Lowest closing costs	☐	☐	☐

27. Overall, how satisfied are you with the…

	Very	Somewhat	Not At All
Lender/mortgage broker you used	☐	☐	☐
Application process	☐	☐	☐
Documentation process required for the loan	☐	☐	☐
Loan closing process	☐	☐	☐
Information in mortgage disclosure documents	☐	☐	☐
Timeliness of mortgage disclosure documents	☐	☐	☐
Settlement agent	☐	☐	☐

28. Did you take a course about home-buying or talk to a housing counselor?

☐ No *Skip to Q32*
☐ Yes

29. How was the home-buying course or counseling provided?

	Yes	No
In person, one-on-one	☐	☐
In person, in a group	☐	☐
Over the phone	☐	☐
Online	☐	☐

30. How many hours was the home-buying course or counseling?

☐ Less than 3 hours
☐ 3 – 6 hours
☐ 7 – 12 hours
☐ More than 12 hours

31. Overall, how helpful was the home-buying course or counseling?

☐ Very ☐ Somewhat ☐ Not at all

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32. What was the primary purpose for this most recent mortgage? If you refinanced an existing mortgage for any reason, please select refinance below. *Mark one answer.*

☐ Purchase of a property – *Continue with Q33*

☐ Permanent financing on a construction loan
☐ Refinance or modification of an existing mortgage
☐ New loan on a mortgage-free property
☐ Some other purpose (specify)
____

Skip to Q36

33. Did you do the following before or after you made an offer on this house or property?

	Before Offer	After Offer	Did Not Do
Contacted a lender to explore mortgage options	☐	☐	☐
Got a pre-approval or pre-qualification from a lender	☐	☐	☐
Decided on the type of loan	☐	☐	☐
Made a decision on which lender to use	☐	☐	☐
Submitted an official loan application	☐	☐	☐

34. What percent down payment did you make on this property?

☐ 0%
☐ Less than 3%
☐ 3% to less than 5%
☐ 5% to less than 10%
☐ 10% to less than 20%
☐ 20% to less than 30%
☐ 30% or more

35. Did you use any of the following sources of funds to purchase this property?

	Used	Not Used
Proceeds from the sale of another property	☐	☐
Savings, retirement account, inheritance, or other assets	☐	☐
Assistance or loan from a nonprofit or government agency	☐	☐
A second lien, home equity loan, or home equity line of credit (HELOC)	☐	☐
Gift or loan from family or friend	☐	☐
Seller contribution	☐	☐

Skip to Q40

36. How important were the following in your decision to refinance, modify or obtain a new mortgage?

	Important	Not Important
Change to a fixed-rate loan	☐	☐
Get a lower interest rate	☐	☐
Get a lower monthly payment	☐	☐
Consolidate or pay down other debt	☐	☐
Repay the loan more quickly	☐	☐
Take out cash	☐	☐

37. Approximately how much was owed, in total, on the old mortgage(s) and loan(s) you refinanced?

$ ____________________ .00

☐ Zero *(the property was mortgage-free)*

38. How does the total amount of your new mortgage(s) compare to the total amount of the old mortgage(s) and loan(s) you paid off *(include any new second liens, home equity loans, or a home equity line of credit (HELOC))*?

☐ New amount is lower – *Skip to Q40*
☐ New amount is about the same – *Skip to Q40*
☐ New amount is higher
☐ Property was mortgage-free

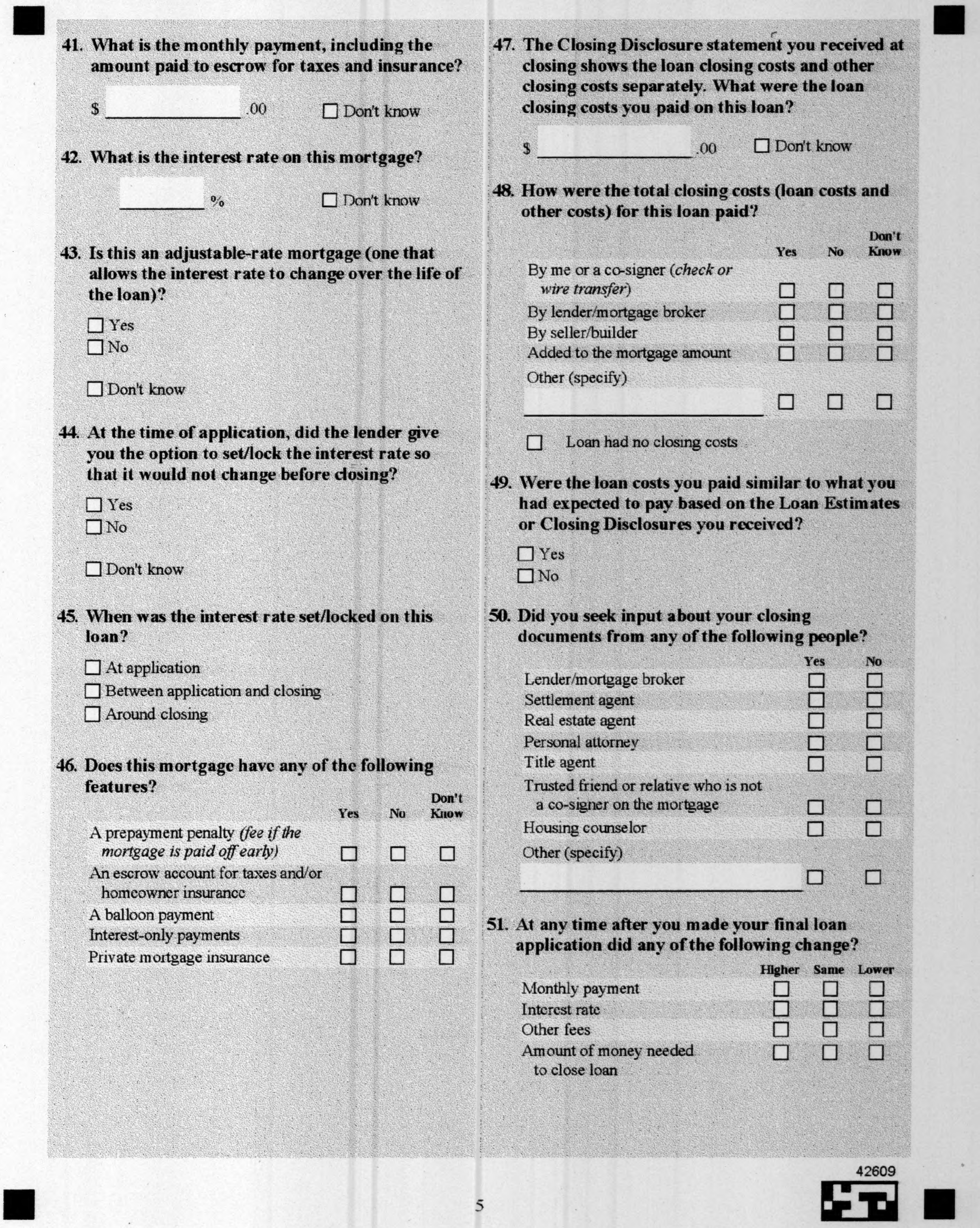
39. Did you use the money you got from this new mortgage for any of the following?

	Yes	No
College expenses	☐	☐
Auto or other major purchase	☐	☐
Buy out co-borrower e.g. ex-spouse	☐	☐
Pay off other bills or debts	☐	☐
Home repairs or new construction	☐	☐
Savings	☐	☐
Closing costs of new mortgage	☐	☐
Business or investment	☐	☐
Other (specify) ____________________	☐	☐

This Mortgage

40. When you took out this most recent mortgage or refinance, what was the loan amount (the dollar amount you borrowed)?

$ ____________________ .00 ☐ Don't know



41. What is the monthly payment, including the amount paid to escrow for taxes and insurance?

$ ________ .00 ☐ Don't know

42. What is the interest rate on this mortgage?

________ % ☐ Don't know

43. Is this an adjustable-rate mortgage (one that allows the interest rate to change over the life of the loan)?

☐ Yes
☐ No

☐ Don't know

44. At the time of application, did the lender give you the option to set/lock the interest rate so that it would not change before closing?

☐ Yes
☐ No

☐ Don't know

45. When was the interest rate set/locked on this loan?

☐ At application
☐ Between application and closing
☐ Around closing

46. Does this mortgage have any of the following features?

	Yes	No	Don't Know
A prepayment penalty *(fee if the mortgage is paid off early)*	☐	☐	☐
An escrow account for taxes and/or homeowner insurance	☐	☐	☐
A balloon payment	☐	☐	☐
Interest-only payments	☐	☐	☐
Private mortgage insurance	☐	☐	☐

47. The Closing Disclosure statement you received at closing shows the loan closing costs and other closing costs separately. What were the loan closing costs you paid on this loan?

$ ________ .00 ☐ Don't know

48. How were the total closing costs (loan costs and other costs) for this loan paid?

	Yes	No	Don't Know
By me or a co-signer (*check or wire transfer*)	☐	☐	☐
By lender/mortgage broker	☐	☐	☐
By seller/builder	☐	☐	☐
Added to the mortgage amount	☐	☐	☐
Other (specify) ________	☐	☐	☐

☐ Loan had no closing costs

49. Were the loan costs you paid similar to what you had expected to pay based on the Loan Estimates or Closing Disclosures you received?

☐ Yes
☐ No

50. Did you seek input about your closing documents from any of the following people?

	Yes	No
Lender/mortgage broker	☐	☐
Settlement agent	☐	☐
Real estate agent	☐	☐
Personal attorney	☐	☐
Title agent	☐	☐
Trusted friend or relative who is not a co-signer on the mortgage	☐	☐
Housing counselor	☐	☐
Other (specify) ________	☐	☐

51. At any time after you made your final loan application did any of the following change?

	Higher	Same	Lower
Monthly payment	☐	☐	☐
Interest rate	☐	☐	☐
Other fees	☐	☐	☐
Amount of money needed to close loan	☐	☐	☐

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52. Did you face any unpleasant "surprises" at your loan closing?

☐ No – *Skip to Q54*
☐ Yes

53. What unpleasant surprises did you face?

	Yes	No
Loan documents not ready	☐	☐
Closing did not occur as originally scheduled	☐	☐
Three day rule required re-disclosure	☐	☐
Mortgage terms different at closing e.g. interest rate, monthly payment	☐	☐
More cash needed at closing e.g. escrow, unexpected fees	☐	☐
Asked to sign blank documents	☐	☐
Rushed at closing or not given time to read documents	☐	☐
Other (specify) ________	☐	☐

54. At the same time you took out this mortgage, did you also take out another loan on the property you financed with this mortgage *(a second lien, home equity loan, or a home equity line of credit (HELOC))*?

☐ No – *Skip to Q56*
☐ Yes

55. What was the amount of this loan?

$ ________ .00

☐ Don't know

56. How well could you explain to someone the...

	Very	Somewhat	Not At All
Process of taking out a mortgage	☐	☐	☐
Difference between a fixed- and an adjustable-rate mortgage	☐	☐	☐
Difference between a prime and subprime loan	☐	☐	☐
Difference between a mortgage's interest rate and its APR	☐	☐	☐
Amortization of a loan	☐	☐	☐
Consequences of not making required mortgage payments	☐	☐	☐
Difference between lender's and owner's title insurance	☐	☐	☐
Relationship between discount points and interest rate	☐	☐	☐
Reason payments into an escrow account can change	☐	☐	☐

This Mortgaged Property

57. When did you buy or get this property? If you refinanced, the date you originally bought or got the property?

____ / ____
month year

58. What was the purchase price of this property, or if you built it, the construction and land cost?

$ ________ .00 ☐ Don't know

59. How did you acquire this property? *Mark one answer.*

☐ Purchased an existing home
☐ Purchased a newly-built home from a builder
☐ Had or purchased land and built a house
☐ Received as a gift or inheritance
☐ Other (specify) ________

60. Which of the following best describes this property? *Mark one answer.*

☐ Single-family detached house – *Skip to Q62*
☐ Mobile home or manufactured home – *Skip to Q62*
☐ Townhouse, row house, or villa
☐ 2-unit, 3-unit, or 4-unit dwelling
☐ Apartment (or condo/co-op) in apartment building
☐ Unit in a partly commercial structure
☐ Other (specify) ________

61. Does this mortgage cover more than one unit?

☐ Yes ☐ No

62. About how much do you think this property is worth in terms of what you could sell it for now?

$ ________ .00 ☐ Don't know

63. Do you rent out all or any portion of this property?

☐ No – *Skip to Q65*
☐ Yes

64. How much rent do you receive annually?

$ ________ .00 per year

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65. Besides you, the mortgage co-signers, and renters, does anyone else help pay the expenses for this property?

☐ Yes ☐ No

66. Which of the following best describes how you use this property?

- ☐ Primary residence *(where you spend the majority of your time)*
- ☐ It will be my primary residence soon
- ☐ Seasonal or second home
- ☐ Home for other relatives
- ☐ Rental or investment property
- ☐ Other (specify)________________

} *Skip to Q68*

67. If primary residence, when did you move into this property?

______ / ______
month year

68. In the last couple years, how has the following changed in the neighborhood where this property is located?

	Significant Increase	Little/No Change	Significant Decrease
Number of homes for sale	☐	☐	☐
Number of vacant homes	☐	☐	☐
Number of homes for rent	☐	☐	☐
Number of foreclosures or short sales	☐	☐	☐
House prices	☐	☐	☐
Overall desirability of living there	☐	☐	☐

69. What do you think will happen to the prices of homes in this neighborhood over the next couple of years?

- ☐ Increase a lot
- ☐ Increase a little
- ☐ Remain about the same
- ☐ Decrease a little
- ☐ Decrease a lot

70. In the next couple of years, how do you expect the overall desirability of living in this neighborhood to change?

- ☐ Become more desirable
- ☐ Stay about the same
- ☐ Become less desirable

71. How likely is it that in the next couple of years you will...

	Very	Somewhat	Not At All
Sell this property	☐	☐	☐
Move but keep this property	☐	☐	☐
Refinance the mortgage on this property	☐	☐	☐
Pay off this mortgage and own the property mortgage-free	☐	☐	☐

Your Household

72. What is your current marital status?

- ☐ Married – *Skip to Q74*
- ☐ Separated
- ☐ Never married
- ☐ Divorced
- ☐ Widowed

73. Do you have a partner who shares the decision-making and responsibilities of running your household but is not your legal spouse?

☐ Yes ☐ No

Please answer the following questions for you and your spouse or partner, if applicable.

74. Age at last birthday:

	You	Spouse/ Partner
	______ years	______ years

75. Sex:

	You	Spouse/ Partner
Male	☐	☐
Female	☐	☐

76. Highest level of education achieved:

	You	Spouse/ Partner
Some schooling	☐	☐
High school graduate	☐	☐
Technical school	☐	☐
Some college	☐	☐
College graduate	☐	☐
Postgraduate studies	☐	☐

77. Hispanic or Latino:

	You	Spouse/ Partner
Yes	☐	☐
No	☐	☐

78. Race: *Mark all that apply.*

	You	Spouse/ Partner
White	☐	☐
Black or African American	☐	☐
American Indian or Alaska Native	☐	☐
Asian	☐	☐
Native Hawaiian or Pacific Islander	☐	☐

79. Current work status: *Mark all that apply.*

	You	Spouse/ Partner
Self-employed full time	☐	☐
Self-employed part time	☐	☐
Employed full time	☐	☐
Employed part time	☐	☐
Retired	☐	☐
Unemployed, temporarily laid-off or on leave	☐	☐
Not working for pay *(student, homemaker, disabled)*	☐	☐

80. Ever served on active duty in the U.S. Armed Forces: *(Active duty includes serving in the U.S. Armed Forces as well as activation from the Reserves or National Guard).*

	You	Spouse/ Partner
Yes, now on active duty	☐	☐
Yes, on active duty in the past, but not now	☐	☐
No, never on active duty except for initial/basic training	☐	☐
No, never served in the U.S. Armed Forces	☐	☐

81. Besides you (and your spouse/partner) who else lives in your household? *Mark all that apply.*

☐ Children/grandchildren under age 18
☐ Children/grandchildren age 18-22
☐ Children/grandchildren age 23 or older
☐ Parents of you or your spouse or partner
☐ Other relatives like siblings or cousins
☐ Non-relatives

☐ No one else

82. Approximately how much is your total annual household income from all sources *(wages, salaries, tips, interest, child support, investment income, retirement, social security, and alimony)*?

☐ Less than $35,000
☐ $35,000 to $49,999
☐ $50,000 to $74,999
☐ $75,000 to $99,999
☐ $100,000 to $174,999
☐ $175,000 or more

83. How does this total annual household income compare to what it is in a "normal" year?

☐ Higher than normal
☐ Normal
☐ Lower than normal

84. Does your total annual household income include any of the following sources?

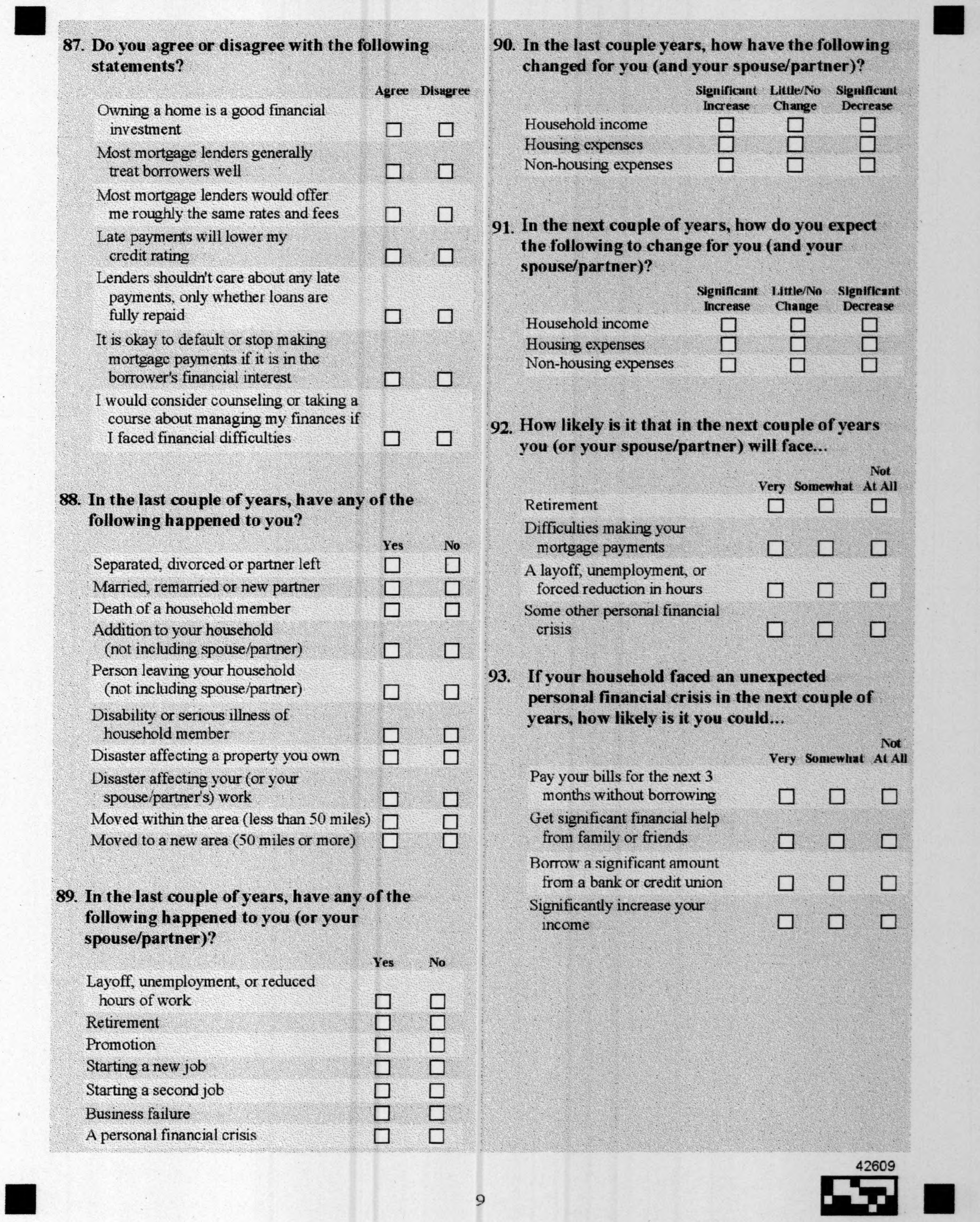
	Yes	No
Wages or salary	☐	☐
Business or self-employment	☐	☐
Interest or dividends	☐	☐
Alimony or child support	☐	☐
Social Security, pension or other retirement benefits	☐	☐

85. Does anyone in your household have any of the following?

	Yes	No
401(k), 403(b), IRA, or pension plan	☐	☐
Stocks, bonds, or mutual funds *(not in retirement accounts or pension plans)*	☐	☐
Certificates of deposit	☐	☐
Investment real estate	☐	☐

86. Which one of the following statements best describes the amount of financial risk you are willing to take when you save or make investments?

☐ Take substantial financial risks expecting to earn substantial returns
☐ Take above-average financial risks expecting to earn above-average returns
☐ Take average financial risks expecting to earn average returns
☐ Not willing to take any financial risks



87. Do you agree or disagree with the following statements?

	Agree	Disagree
Owning a home is a good financial investment	☐	☐
Most mortgage lenders generally treat borrowers well	☐	☐
Most mortgage lenders would offer me roughly the same rates and fees	☐	☐
Late payments will lower my credit rating	☐	☐
Lenders shouldn't care about any late payments, only whether loans are fully repaid	☐	☐
It is okay to default or stop making mortgage payments if it is in the borrower's financial interest	☐	☐
I would consider counseling or taking a course about managing my finances if I faced financial difficulties	☐	☐

88. In the last couple of years, have any of the following happened to you?

	Yes	No
Separated, divorced or partner left	☐	☐
Married, remarried or new partner	☐	☐
Death of a household member	☐	☐
Addition to your household (not including spouse/partner)	☐	☐
Person leaving your household (not including spouse/partner)	☐	☐
Disability or serious illness of household member	☐	☐
Disaster affecting a property you own	☐	☐
Disaster affecting your (or your spouse/partner's) work	☐	☐
Moved within the area (less than 50 miles)	☐	☐
Moved to a new area (50 miles or more)	☐	☐

89. In the last couple of years, have any of the following happened to you (or your spouse/partner)?

	Yes	No
Layoff, unemployment, or reduced hours of work	☐	☐
Retirement	☐	☐
Promotion	☐	☐
Starting a new job	☐	☐
Starting a second job	☐	☐
Business failure	☐	☐
A personal financial crisis	☐	☐

90. In the last couple years, how have the following changed for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

91. In the next couple of years, how do you expect the following to change for you (and your spouse/partner)?

	Significant Increase	Little/No Change	Significant Decrease
Household income	☐	☐	☐
Housing expenses	☐	☐	☐
Non-housing expenses	☐	☐	☐

92. How likely is it that in the next couple of years you (or your spouse/partner) will face...

	Very	Somewhat	Not At All
Retirement	☐	☐	☐
Difficulties making your mortgage payments	☐	☐	☐
A layoff, unemployment, or forced reduction in hours	☐	☐	☐
Some other personal financial crisis	☐	☐	☐

93. If your household faced an unexpected personal financial crisis in the next couple of years, how likely is it you could...

	Very	Somewhat	Not At All
Pay your bills for the next 3 months without borrowing	☐	☐	☐
Get significant financial help from family or friends	☐	☐	☐
Borrow a significant amount from a bank or credit union	☐	☐	☐
Significantly increase your income	☐	☐	☐

The Federal Housing Finance Agency and the Consumer Financial Protection Bureau thank you for completing this survey.

We have provided the space below if you wish to share additional comments or further explain any of your answers. ***Please do not put your name or address on the questionnaire.***

Please use the enclosed business reply envelope to return your completed questionnaire.

FHFA
1600 Research Blvd, RC B16
Rockville, MD 20850

For any questions about the survey or online access you can call toll free 1-855-339-7877.

[FR Doc. 2016–21983 Filed 9–12–16; 8:45 am]

BILLING CODE 8070–01–C

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 2016.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *CRB Group Inc., Teaneck, New Jersey;* to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–21953 Filed 9–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 161 0061]

ON Semiconductor Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 26, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/fairchildconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "In the Matter of ON Semiconductor Corporation, File No. 161–0061—Consent Agreement" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fairchildconsent* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write "In the Matter of ON Semiconductor Corporation, File No. 161–0061—Consent Agreement" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Llewellyn Davis (202–326–3394), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 25, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 26, 2016. Write "In the Matter of ON Semiconductor Corporation, File No. 161–0061—Consent Agreement" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fairchildconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

If you file your comment on paper, write "In the Matter of ON Semiconductor Corporation, File No. 161–0061—Consent Agreement" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 26, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

1. Introduction

The Federal Trade Commission ("Commission") has accepted from ON Semiconductor Corporation ("ON"), subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") designed to remedy the anticompetitive effects that would likely result from ON's proposed acquisition of Fairchild Semiconductor International, Inc. ("Fairchild").

On November 18, 2015, ON announced that it had entered into a definitive agreement involving an all-cash tender offer to acquire all of the outstanding shares of common stock of Fairchild for approximately $2.4 billion ("Acquisition"). The proposed Acquisition would combine the two largest suppliers of insulated-gate bipolar transistors (IGBTs) used in automotive ignition systems ("Ignition IGBTs") worldwide. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in the worldwide market for Ignition IGBTs.

Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, ON is required to divest its Ignition IGBT business to Littelfuse, Inc. ("Littelfuse") no later than 10 days from the close of the Acquisition. The divestiture package includes design files and intellectual property associated with the manufacture and sale of Ignition IGBTs, customer and distributor relationships with respect to Ignition IGBTs, and technology transfers and transitional services such as manufacturing support. In short, the Consent Agreement provides Littelfuse with everything it needs to compete effectively in the Ignition IGBT market.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

2. The Parties

Headquartered in Phoenix, Arizona, ON is a semiconductor developer and manufacturer providing a highly diversified portfolio of semiconductor products, including power and signal management, image sensing, and other standard and custom devices, for a variety of end-use applications, including communications, computing, consumer, industrial, and automotive. ON designs, manufactures, and sells Ignition IGBTs, among other products, in its Automotive Product Division.

Fairchild, headquartered in Sunnyvale, California, develops and manufactures a wide variety of low to high voltage power semiconductor products and devices as well as certain non-power semiconductor devices, which are used in a variety of end-use applications, including automotive, consumer, computing, and industrial applications. Fairchild designs, manufactures, and sells Ignition IGBTs in its Automotive Business Unit.

3. The Relevant Product and Market Structure

The relevant product market in which to assess the competitive effects of the proposed Acquisition is no broader than Ignition IGBTs. IGBTs are a type of semiconductor that transmits, converts, and switches electrical power. Ignition IGBTs are a type of IGBT specifically designed and calibrated for automotive ignition systems in gasoline engine vehicles. They function as switches that control the electrical current that passes through the ignition coil. ON and Fairchild sell Ignition IGBTs to Tier 1 automotive suppliers, who then incorporate them into the ignition systems that they sell to automotive manufacturers. Currently, there is no functional substitute for Ignition IGBTs.

The relevant geographic market for Ignition IGBTs is worldwide. The two major Ignition IGBT suppliers—ON and Fairchild— manufacture the products in facilities around the world, and ship them to customer locations worldwide. There are no regulatory barriers, tariffs, or technical specifications to impede worldwide trade, and transportation costs are low.

The Ignition IGBT market is characterized by a limited number of suppliers. ON and Fairchild are by far the two largest suppliers of Ignition IGBTs. Fairchild is the market leader and ON is the second-largest supplier. Their combined share of the Ignition IGBT market would exceed 60%. The parties' next closest competitor has a significantly smaller share of the market. Other market participants are even smaller and do not constrain the parties. There are also several other suppliers located in Japan, but they primarily supply Japanese automotive manufacturers. Due to burdensome qualification requirements for customers outside of Japan, it would take several years before these suppliers could be qualified to supply the parties' customers with Ignition IGBTs.

The proposed ON/Fairchild combination would cause a highly concentrated market for Ignition IGBTs to become even more concentrated, increasing the Herfindahl-Hirschman Index ("HHI") by more than 1500. This increase in concentration far exceeds the thresholds set out in the *Horizontal Merger Guidelines* for raising a presumption that the Acquisition would create or enhance market power.

4. Effects of the Acquisition

Absent a divestiture, the proposed Acquisition is likely to cause competitive harm in the Ignition IGBT market. ON and Fairchild compete directly against each other for Ignition IGBT sales, and customers benefit from that competition in terms of both pricing and product innovation. Customers describe ON and Fairchild as each other's closest competitor.

Likewise, ON and Fairchild view each other the same way. By eliminating the competition between ON and Fairchild, the proposed Acquisition likely would lead to unilateral effects in the form of higher prices and reduced innovation.

5. Entry

Entry into the Ignition IGBT market is not likely to deter or counteract any anti-competitive effects of the proposed Acquisition. Given the niche nature of the Ignition IGBT market, declining demand, and the lengthy time it would take to qualify new products with customers, entry is unlikely and would not be timely. Market participants confirmed that it would take at least three to four years before a new entrant could become a viable supplier. Existing IGBT manufacturers, moreover, are not rapid entrants. The process of designing an IGBT for ignition systems and qualifying it with customers would take years.

6. The Proposed Consent Agreement

The Consent Agreement restores the competition lost from the proposed Acquisition by requiring ON to divest its Ignition IGBT business to Littelfuse, a publicly traded company based in Chicago, Illinois. The proposed divestiture includes everything needed for Littelfuse to compete effectively in the worldwide market for Ignition IGBTs.

Under the Order, ON is required to divest its Ignition IGBT business to Littelfuse no later than 10 days from the close of the Acquisition. The divestiture package consists of the following assets: Design files, patents and technologies for Ignition IGBTs; licenses to manufacturing process technology; a process to facilitate the transfer of customer and distributor relationships with respect to Ignition IGBTs; technology transfers and transitional services including manufacturing support; and, if Littelfuse requests, secondment of ON personnel to support the transfer from ON to Littelfuse of the technology and know-how for production of Ignition IGBTs. No physical assets are being divested because a third party will manufacture Ignition IGBTs for Littelfuse.

The Order requires that, at the request of Littelfuse and in a manner approved by the Commission, ON must provide transitional manufacturing for a period of up to three years with a possible option to extend the period by up to two years. Similarly, the Order also requires ON to provide support services such as logistical and administrative support for up to three years with a possible option to extend the period for up to two years. In addition, the Order includes other standard terms designed to ensure the viability of the divested business.

A Monitor will monitor ON's compliance with the obligations set forth in the Order. If ON does not fully comply with the divestiture and requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the Ignition IGBT business and perform ON's other obligations consistent with the Order.

The divestiture of ON's Ignition IGBT business to Littelfuse will preserve competition that would otherwise have been lost as a result of the Acquisition. Potential customers have confirmed that the divested assets include everything necessary to compete effectively as a viable business. Similarly, potential customers have confirmed that Littelfuse would be a competitive option as a supplier.

7. Opportunity for Public Comment

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–21902 Filed 9–12–16; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWICC–2016–04; Docket No. 2016–0006; Sequence 4]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the schedule and agenda for the September 30, 2016 meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES: *Effective:* September 13, 2016.

Meeting Date and Location: The meeting will be held on Friday, September 30, 2016, starting at 3:00 p.m. Eastern Daylight Time (EDT), and ending no later than 5:00 p.m. (EDT). The meeting will be held at the National Museum of the United States Air Force, 1100 Spaatz St., Dayton, OH, 45431. This location is handicapped accessible. The meeting will be open to the public. Persons attending in person are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/about/policies/fragrance.htm for more information*).

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. (EDT) on September 23, 2016 and may be provided by email to *daniel.dayton@worldwar1centennial.gov.* Contact Daniel S. Dayton at *daniel.dayton@worldwar1centennial.org* to register to comment during the meeting's 30-minute public comment period.

Registered speakers/organizations will be allowed five minutes, and will need to provide written copies of their presentations. Requests to comment, together with presentations for the meeting, must be received by 5:00 p.m. (EDT) on Friday, September 23, 2016. Please contact Mr. Dayton at the email address above to obtain meeting materials.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, World War 1 Centennial Commission, 701 Pennsylvania Avenue NW., 123, Washington, DC, 20004–2608, or via phone at 202–380–0725 (note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272 (as amended), as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes.

Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I. The Commission does not have an appropriation and operated solely on donated funds.

Agenda: Friday September 30, 2016

Old Business

- Acceptance of minutes of last meeting
- Public Comment Period

New Business

- Executive Director's Report—Mr. Dayton
- Approval of United States Foundation Relationship Memo
- Approval of Budget Request for Foundation
- Memorial Report—Mr. Fountain
- Education Report—Dr. O'Connell
- Endorsements—(RFS)—Dr. Seefried
- International Report—Dr. Seefried
- Report on April 6 Event—Drs. Seefried and Naylor
- Other Business
- Chairman's Report
- Set Next Meeting
- Motion to Adjourn

Dated: September 7, 2016.

Daniel S. Dayton,

Designated Federal Official, World War I Centennial Commission.

[FR Doc. 2016–21901 Filed 9–12–16; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16BBS]

Proposed Data Collection Submitted for Public Comment and Recommendations—Airline and Traveler Information Collection: Domestic Manifests and the Passenger Locator Form; Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice; Correction.

SUMMARY: The Centers for Disease Control and Prevention (CDC) published a document in the **Federal Register** of September 2, 2016, concerning request for comments on *Proposed Data Collection Submitted for Public Comment and Recommendations—Airline and Traveler Information Collection: Domestic Manifests and the Passenger Locator Form.* The document provided the incorrect docket number (CDC–2016–0088).

FOR FURTHER INFORMATION CONTACT: Leroy Richardson, 1600 Clifton Road, MS D–74, Atlanta, GA 30333; telephone (404) 639–4965; email: *omb@cdc.gov.*

Correction

In the **Federal Register** of September 2, 2016, in FR Doc. 2016–21103, on page 60702, in the second column (second and third paragraphs), correct the Docket No. to read:

CDC–2016–0086

Dated: September 9, 2016.

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–21923 Filed 9–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–1005]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Older Adult Safe Mobility Assessment Tool (OMB Control No. 0920–1005, Expiration Date: 10/31/2016)—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is seeking OMB approval to extend the previously approved information collection project under OMB Control Number 0920–1005 to evaluate the Mobility Planning Tool (MPT).

Within the Injury Center, preventing falls and ensuring safe transportation for older adults are strategic priorities. The purposes of this information collection is to evaluate whether the Mobility Planning Tool is effective for promoting readiness to adopt mobility-protective behaviors in older adults and to assess potential strategies for dissemination of the MPT.

The study population is community-living older adults ages 60–74 with no known mobility limitations. Effectiveness of the tool will be assessed using two different comparisons: (1) A comparison between individuals' attitudes and behaviors related to protecting their mobility as they age before and after receiving the MPT in the group that received the MPT, and (2) a comparison of both mobility-related attitudes and behaviors and changes between the group that received the MPT and the group that did not receive the MPT.

Study findings will be used to identify areas of the MPT that may need revision before it is disseminated publicly.

There are no costs to respondents other than their time. The total estimated annual burden hours are 367.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Individuals Responding to Initial Phone Call Who Refuse to be Screened.	Screening Interview Guide	1,250	1	1/60
Individuals Responding to Initial Phone Call Responding to Screening Questions.	Screening Interview Guide	750	1	5/60
Study Participants	Baseline Interview Guide	500	1	10/60
Study Participants	MPT	250	1	30/60
Study Participants	Follow-up Interview Guide	450	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–21922 Filed 9–12–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2244]

Qualification of Biomarker—Plasma Fibrinogen in Studies Examining Exacerbations and/or All-Cause Mortality for Patients With Chronic Obstructive Pulmonary Disease; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled "Qualification of Biomarker—Plasma Fibrinogen in Studies Examining Exacerbations and/or All-Cause Mortality for Patients With Chronic Obstructive Pulmonary Disease." This guidance provides a qualified context of use (COU) for plasma fibrinogen in interventional clinical trials of chronic obstructive pulmonary disease (COPD) subjects at high risk for exacerbations and/or all-cause mortality. This guidance also describes the experimental conditions and constraints for which this biomarker is qualified through the Center for Drug Evaluation and Research (CDER) Biomarker Qualification Program. This biomarker can be used by drug developers for the qualified COU in submissions of investigational new drug applications (INDs), new drug applications (NDAs), and biologics license applications (BLAs) without the relevant CDER review group reconsidering and reconfirming the suitability of the biomarker.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comment as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–2244 for "Qualification for the Use of Plasma Fibrinogen in Studies Examining Exacerbations and/or All-Cause Mortality for Patients with Chronic Obstructive Pulmonary Disease; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/*

regulatoryinformation/dockets/default.htm.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Marianne Noone, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 4528, Silver Spring, MD 20993–0002, 301–796–2600.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Qualification of Biomarker—Plasma Fibrinogen in Studies Examining Exacerbations and/or All-Cause Mortality for Patients With Chronic Obstructive Pulmonary Disease." In the **Federal Register** of January 7, 2014 (79 FR 831), FDA announced the availability of a guidance for industry entitled "Qualification Process for Drug Development Tools" that described the process that would be used to qualify Drug Development Tools (DDTs) and to make new DDT qualification recommendations available on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.* The qualification recommendations in the current guidance were developed using the process described in that 2014 guidance, and the current guidance is an attachment to that 2014 guidance.

Later, in the **Federal Register** of July 7, 2015 (80 FR 38694), FDA announced the availability of a draft guidance entitled "Qualification of Biomarker—Plasma Fibrinogen in Studies Examining Exacerbations and/or All-Cause Mortality for Patients With Chronic Obstructive Pulmonary Disease." The Agency did not receive any comments on that draft guidance during the public comment period. The current guidance finalizes that draft guidance.

This guidance provides recommendations for the use of plasma fibrinogen, measured at baseline, as a prognostic biomarker to enrich clinical trial populations of COPD subjects at high risk for exacerbations and/or all-cause mortality for inclusion in interventional clinical trials. This biomarker should be considered with other subject demographic and clinical characteristics, including a prior history of COPD exacerbations, as an enrichment factor in these trials. Specifically, this guidance provides the COU for which this biomarker is qualified through the CDER Biomarker Qualification Program. "Biomarker qualification" is a conclusion that within the stated COU, the biomarker can be relied upon to have a specific interpretation and application in drug development and regulatory review. Qualification of this biomarker for this specific COU represents the conclusion that analytically valid measurements of the biomarker can be relied on to have a specific use and interpretable meaning. This biomarker can be used by drug developers for the qualified context in submission of INDs, NDAs, and BLAs without the relevant CDER review group reconsidering and reconfirming the suitability of the biomarker. After a biomarker is qualified for the specific COU, its qualification is not limited to a single, specific drug development program. Making the qualification recommendations widely known and available for use by drug developers will contribute to drug innovation, thus supporting public health.

Innovative and improved DDTs can help streamline the drug development process, improve the chances for clinical trial success, and yield more information about a treatment and/or disease. DDTs include, but are not limited to, biomarkers, clinical outcome assessments, and animal models under the animal rule. Refer to DDTs Qualification Programs at *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DrugDevelopmentTools QualificationProgram/default.htm* for additional information.

CDER has initiated this formal qualification process to work with developers of these biomarker DDTs to guide them as they refine and evaluate DDTs for use in the regulatory context. Once qualified, biomarker DDTs will be publicly available for use in any drug development program for the qualified COU. As described in the January 2014 guidance, biomarker DDTs should be developed and reviewed using this process.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the use of plasma fibrinogen, measured at baseline, as a prognostic biomarker to enrich clinical trial populations of COPD subjects at high risk for exacerbations and/or all-cause mortality for inclusion in interventional clinical trials. This guidance does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection has been approved under the OMB control numbers 0910–0001 and 0910–0014. The information requested in this guidance is currently submitted to FDA to support medical product effectiveness (see 21 CFR 312.30, 21 CFR 314.50(d)(5), and 21 CFR 314.126(b)(6)).

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21964 Filed 9–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1143]

Use of Nucleic Acid Tests To Reduce the Risk of Transmission of West Nile Virus From Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Guidance for Industry." The guidance document provides establishments that make donor eligibility determinations for donors of HCT/Ps with recommendations for testing living donors for West Nile Virus (WNV). Specifically, the guidance provides recommendations regarding the use of an FDA-licensed nucleic acid test (NAT) to test living donors of HCT/Ps for evidence of infection with WNV. The guidance does not provide recommendations regarding testing of cadaveric HCT/P donors for WNV. The guidance announced in this notice finalizes the draft guidance of the same title dated December 2015. This guidance supplements the donor screening recommendations for WNV (which will remain in place) in sections IV.E. (recommendations 15 and 16) and IV.F. (recommendation 5), and supersedes the "West Nile Virus (WNV)" section in Appendix 6 of the guidance entitled "Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)" dated August 2007 (2007 Donor Eligibility Guidance).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the guidance by December 12, 2016.

SUPPLEMENTARY INFORMATION:

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–D–1143 for "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jonathan McKnight, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

I. Background

FDA is announcing the availability of a document entitled "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus From Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Guidance for Industry." The guidance document provides establishments that make donor eligibility determinations for donors of HCT/Ps with recommendations for testing living donors for WNV. The guidance does not provide recommendations regarding testing of cadaveric HCT/P donors for WNV. FDA believes that the use of an FDA-licensed NAT will reduce the risk of transmission of WNV from living donors of HCT/Ps and therefore recommends that you use an FDA-licensed NAT for testing living donors of HCT/Ps for infection with WNV as set forth in the guidance. The 2007 Donor Eligibility Guidance indicated that FDA may recommend routine use of an appropriate, licensed donor screening test(s) to detect acute infections with WNV using NAT technology, once such tests were available.

In the **Federal Register** of December 15, 2015 (80 FR 77645), FDA announced the availability of the draft guidance entitled "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps); Draft Guidance for Industry" dated December 2015 (December 2015 draft guidance). FDA received several comments on the draft guidance and those comments were considered as the guidance was developed.

In the **Federal Register** of February 28, 2007 (72 FR 9007), FDA announced the availability of the 2007 Donor Eligibility Guidance. FDA issued a revised version of this guidance under the same title, dated August 2007 (2007 Donor Eligibility Guidance).

The guidance announced in this notice finalizes the December 2015 draft guidance and supplements sections IV.E. (recommendations 15 and 16) and IV.F. (recommendation 5), and supersedes the "West Nile Virus (WNV)" section in Appendix 6 of the 2007 Donor Eligibility Guidance.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Use of Nucleic Acid Tests to Reduce the Risk of Transmission of West Nile Virus from Living Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–21969 Filed 9–12–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Healthy Start Evaluation and Quality Improvement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than October 13, 2016.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Healthy Start Evaluation and Quality Improvement OMB No. 0915–0338—Revision

Abstract: The National Healthy Start Program, funded through HRSA's Maternal and Child Health Bureau (MCHB), has the goal of reducing disparities in infant mortality and adverse perinatal outcomes. The program began as a demonstration project with 15 grantees in 1991 and has expanded over the past 2 decades to 100 grantees across 37 states and Washington, DC. Healthy Start grantees operate in communities with rates of infant mortality at least 1.5 times the U.S. national average and high rates for other adverse perinatal outcomes. These communities are geographically, racially, ethnically, and linguistically diverse low-income areas. Healthy Start covers services during the perinatal period (before, during, after pregnancy) and follows the woman and infant through 2 years after the end of the pregnancy. The Healthy Start program has five approaches including: (1) Improving women's health; (2) promoting quality services; (3) strengthening family resilience; (4) achieving collective impact; and (5) increasing accountability through quality assurance, performance monitoring, and evaluation.

MCHB seeks to implement a uniform set of data elements for monitoring and conducting a mixed-methods evaluation to assess the effectiveness of the program on individual, organizational, and community-level outcomes. Data collection instruments will include a National Healthy Start Program Survey; Community Action Network Survey; Healthy Start Site Visit Protocol; Healthy Start Participant Focus Group Protocol—these instruments have not been changed. The Preconception, Pregnancy and Parenting (3Ps) Information Form will also be used as a data collection instrument; however the 3Ps Information Form has been redesigned from one form into six forms. The six forms include: (1) Demographic Intake Form; (2) Pregnancy Status/History; (3) Preconception; (4) Prenatal; (5) Postpartum; and (6) Interconception/Parenting. The purpose of this redesign is to enhance the 3Ps Information Form to ensure collected data is meaningful for monitoring and evaluation, as well as screening and care coordination, and streamline previously separate data systems. The 3Ps Information Form was also redesigned to allow questions to be administered in accordance with the participant's enrollment/service delivery status and perinatal period. In addition to redesigning the 3Ps Information Form, HRSA deleted questions that are neither critical for evaluation nor programmatic purposes. HRSA also added questions to the 3Ps Information Form to allow the Form to be used as an all-inclusive data collection instrument for MCHB and Healthy Start grantees. The additional questions extend and refine previously approved content, allowing for the collection of more granular and/or in-depth information on existing topics. Adding these questions allows Healthy Start grantees to better assess risk, identify needed services, provide appropriate follow-up activities to program participants, and improve overall service delivery and quality.

Need and Proposed Use of the Information: The purpose of the data collection instruments is to obtain consistent information across all grantees about Healthy Start and its outcomes. The data will be used to: (1) Conduct ongoing performance monitoring of the program; (2) provide credible and rigorous evidence of program effect on outcomes; (3) assess the relative contribution of the five program approaches to individual and community-level outcomes; (4) meet program needs for accountability, programmatic decision-making, and ongoing quality assurance; and (5) strengthen the evidence-base, and identify best and promising practices for the program to support sustainability, replication, and dissemination of the program.

Likely Respondents: Respondents include project directors and staff for the National Healthy Start Program Survey; representatives from partner organizations for the Community Action Network Survey; program staff, providers, and partners for the Healthy Start Site Visit Protocol; and program participants for the Healthy Start Participant Focus Group Protocol. Respondents for the redesigned 3Ps Information Form (*i.e.,* (1) Demographic Intake; (2) Pregnancy Status/History; (3) Preconception; (4) Prenatal; (5) Postpartum; and (6) Interconception/Parenting) are pregnant women and women of reproductive age who are served by the Healthy Start Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
3Ps Information Form:					
1. Demographic Intake Form	*+40,675	1	40,675	0.08	3,254
2. Pregnancy Status/History	40,675	1	40,675	0.17	6,915
3. Preconception	*+20,337	1	20,337	1.00	20,337
4. Prenatal	20,337	1	20,337	1.00	20,337
5. Postpartum	20,337	1	20,337	1.00	20,337
6. Interconception/Parenting	20,337	1	20,337	1.00	20,337
National Healthy Start Program Web Survey	+100	1	100	2.00	200
CAN member Web Survey	+225	1	225	0.75	169
Healthy Start Site Visit Protocol	+15	1	15	6.00	90
Healthy Start Participant Focus Group Protocol	+180	1	180	1.00	180
Total	61,532	....	61,532	....	92,156

*The same individuals (40,675) complete the Demographic Intake and Pregnancy Status/History forms, and a subset of these same individuals (20,337) also complete the Preconception, Prenatal, Postpartum, and Interconception/Parenting forms for total of 61,532 respondents and responses.

+These are the numbers included in the total respondent count.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–21889 Filed 9–12–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Fogarty International Center Advisory Board was renewed for an additional two-year period on August 31, 2016.

It is determined that the Fogarty International Center Advisory Board is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov.*

Dated: September 6, 2016.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21899 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cell Replacement Technology for Type 1 Diabetes (SBIR).

Date: October 4, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies (R01).

Date: October 27, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 7, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21895 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Analogues of Withanolide E Sensitize Cancer Cells to Apoptosis.

Keywords: TRAIL, TLR3, apoptosis, immunotherapy, tumor necrosis factor, TNF.

Description of Technology: The tumor necrosis factor (TNF)-related apoptosis-inducing ligand (TRAIL) protein has been a target of interest in cancer therapy because it plays a large role in inducing cell apoptosis in cancer cells but not in normal cells. Although TRAIL has been reported to successfully target certain tumor cells which are resistant to traditional chemotherapy or radiation, TRAIL resistance has also been widely observed. Similarly, Toll-like receptor (TLR) 3 ligands such as poly I:C have also been reported to promote apoptosis in certain cancer cells, though the apoptotic signaling in most cancer cells was weak and was only significant following longer term incubations. Thus, there is a need to develop compounds that can sensitize cancer cells to apoptosis inducing ligands, such as poly I:C and TRAIL.

In collaboration with the University of Arizona, NCI investigators have discovered a series of compounds in the withanolide family that synergistically enhance the response of cancer cells to treatment with an apoptosis-inducing ligand. The compounds each show a 4- to 10-fold increase in potency compared to withanolide E alone in promoting death ligand-mediated cancer cell death. One biotinylated analogue in particular is at least 15-fold more potent than withanolide E in promoting apoptosis in human melanoma cells when used in combination with either poly I:C or TRAIL. A selection of active compounds were tested in murine xenograft models of human melanoma and showed decreased tumor growth and tumor regression.

Potential Commercial Applications

- Potential therapeutic for the treatment of cancer either alone or in combination with an apoptosis inducing agent such as TRAIL receptor or TLR 3 agonists by directly promoting tumor cell apoptosis.
- Possible indirect enhancement of cancer immunotherapy due to release of cancer cell antigens in the presence of the powerful immune-adjuvant effects of TLR3 agonists.

Value Proposition

- Withanolide E derivatives enhance the anti-cancer activity of known apoptosis inducing ligands such as TRAIL or poly I:C and may be used to enhance efficacy of TRAIL receptor or poly I:C agonists that are currently under development.

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): Thomas Sayers (NCI), Alan Brooks (NCI), Curtis Henrich (NCI), Poonam Tewary (NCI), James McMahon (NCI), Leslie Gunatilaka (University of Arizona), Ya-ming Xu (University of Arizona), and E.M. Kithsiri Wijeratne (University of Arizona).

Intellectual Property: US Provisional Application No. 62/292,974, entitled "Method of Sensitizing Cancer Cells to The Cytotoxic Effects of Apoptosis Inducing Ligands in Cancer Treatment," filed February 9, 2016.

Publications

1. Tewary P., Gunatilaka A.A. and Sayers T.J. (2016) Using natural products to promote caspase-8-

dependent cancer cell death. Cancer Immunol Immunother. doi:10.1007/s00262–016–1855–0.

Related Technologies: US Patent 9,238,069 (HHS Ref. No. E–050–2010) entitled "Use of withanolides to sensitize cancer cells to the cytotoxic effects of Apo2L/TRAIL" issued January 19, 2016.

Collaboration Opportunity: Researchers at the NCI seek licensing and/or co-development research collaborations for development of withanolide E analogues for the treatment of cancer.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: September 6, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–21904 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services Research Committee.

Date: October 7, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 7, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21897 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Superfund Hazardous Substance Research and Training Program.

Date: September 27–29, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Hotel and Convention Center, 4700 Emperor Blvd., Durham, NC 27703.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, 530 Davis Drive, Room 3074, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Superfund Hazardous Substance Research and Training Program.

Date: September 29, 2016.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Center, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, 530 Davis Drive, Room 3171, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 7, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21896 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: October 14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Priscah Mujuru, DRPH, MPH, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Bethesda Drive, 2221A, Bethesda, MD 20892, 301–435–6908, *mujurup@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research;

93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 7, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21894 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.

Date: October 5–6, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: October 6–7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott New Orleans, 555 Canal Street, New Orleans, LA 70130.

Contact Person: Mary G Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Dissemination and Implementation Research in Health Study Section.

Date: October 12–13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: October 12–13, 2016.

Time: 8:00 a.m. to 5:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Xenobiotic and Nutrient Disposition and Action Study Section.

Date: October 12, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences Biomedical Imaging and Bioengineering.

Date: October 12, 2016.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 7, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–21893 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: A SNP-based blood test for predicting breast cancer survival and determining treatment strategies.

Keywords: SNP Single Nucleotide Polymorphism Array Probe Breast Cancer.

Description of Technology

Metastasis is a primary cause of patient morbidity and mortality in solid tumors. Although recent advances in genomic technologies have provided major insights into tumor etiology, there is a significant lack of knowledge regarding the factors that contribute to metastasis.

Through studying the metastatic susceptibility of tumors, researchers at NCI's Laboratory of Cancer Biology and Genetics have discovered a select panel of single nucleotide polymorphisms (SNPs) and a method for predicting breast cancer patient's survival. In this array, SNPs are analyzed from a patient's genomic DNA (gDNA); the result can be used to predict whether a patient is likely to respond to current breast cancer treatment strategies. This invention can reassure newly diagnosed patients that they have a high probability of responding to treatment and can also identify those patients that require alternative, more aggressive therapeutic strategies. Importantly, this invention has several advantages over the currently-offered gene expression-based breast cancer prognostic tests. Since this array can be completed following routine blood draw, rather than through a tumor biopsy, the samples are more stable, the process is quicker, simpler, less-invasive, and more cost-effective than current methods.

Potential Commercial Applications

- Identification of patients with higher susceptibility to tumor progression (*i.e.*, metastasis).
- Prediction of breast cancer survival (less than 10 years, for example) using array and methods.
- Personalization of patient treatment.

Value Proposition: Since the array processes DNA from blood rather than tissue from a standard biopsy or resection of a primary tumor, it is faster, simpler, more stable, more cost-efficient, and less-invasive because gDNA is more stable than tumor mRNA.

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): Kent W. Hunter, Ph.D. (NCI), Howard H. Yang, Ph.D. (NCI), Maxwell P. Lee, Ph.D. (NCI).

Intellectual Property: HHS Reference No. E–082–2015/0–US–01

US Provisional Application 62/297,557 (HHS Reference No. E–082–2015/0–US–01) filed February 19, 2016 entitled "SNP-Based Assay to Predict Breast Cancer Survival".

Collaboration Opportunity: Researchers at the NCI seek licensing and/or co-development research collaborations for methods that provide significant improvements in examining additional SNPs for improved prognostics, and to evaluate whether the SNP signature is associated with overall cancer incidence or effective treatment strategies.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email *hewesj@mail.nih.gov.*

Dated: September 5, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–21905 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD, 20850–9702, Tel. 240–276–5515 or Email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Immunotoxins with Increased Stability for Cancer Therapy.

Keywords: Recombinant Immunotoxin, RIT, Antibody, Mesothelin, Mesothelioma.

Description of Technology

Recombinant immunotoxins (RITs) are fusions of an antibody-based targeting moiety and a toxin. Pseudomonas exotoxin A (PE) is a bacterial toxin that has been used in several RITs evaluated in clinical trials.[1] [2] Once the Fv portion of the immunotoxin binds to its target receptor, the immunotoxin is internalized by endocytosis. Following internalization, Furin cleavage is critically important for proper cytosolic shuttling of the immunotoxin. Early PE-containing RITs were effective, but also had issues of off-target toxicity.

To mitigate off-target toxicity of PE, the inventors removed specific sequences of domain II, and connected the Fv domain to domain III (PE24) by a furin linker peptide. These PE24–RITs are very active and better tolerated by mice. However, the PE24-containing RITs could potentially be cleaved and inactivated before internalization by cell surface furin or other proteases in the bloodstream or the tumor microenvironment, due to the absence of a key disulfide bond (lost after removal of domain II sequences).

Researchers at the National Cancer Institute's Laboratory of Molecular Biology (NCI LMB) developed and isolated several de-immunized, low toxicity, PE24-based RITs with a longer serum half-life. This was enabled by using a disulfide bond to protect the furin cleavage sequence (FCS). Collectively, the new RITs are designated "DS–PE24" immunotoxins. The goal of the disulfide bond is to protect the RIT from cleavage-based deactivation before internalization. The most active of these new RITs has longer serum half-life than an RIT without the disulfide bond, has the same anti-tumor activity, while remaining less cytotoxic *in vitro.* Currently, the inventors are working with mouse models to further develop the DS–PE24 RITs towards developing an anti-mesothelin RIT for treatment of mesothelin-expressing cancers, such as mesothelioma.

Potential Commercial Applications

- A more stable cancer therapeutic for currently used PE-coupled RITs, for example, anti-mesothelin PE-based immunotoxins.

Value Proposition

- Protection of the FCS by a disulfide bond results in more stable RIT, which can lead to fewer off-target effects.

Development Stage: In-vivo.

Inventor(s): Ira Pastan M.D. (NCI), *et al.*

Intellectual Property: United States Provisional Patent Application 62/323,668 (NIH Reference E–157–2016/0–US–01), entitled "New, More Stable

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[1] Fitzgerald DJ, Kreitman R, et al. *Int J Med Microbiol.* 2004;293:577–582.

[2] Sampson JH, Akabani G, Archer GE, et al. *J Neurooncol.* 2003;65(1):27–35.

Immunotoxin Variants with a Disulfide Bond Protecting the Furin Cleavage Site."

Related Technologies

- NIH Reference E–262–2005, entitled "Mutated Pseudomonas Exotoxins with Reduced Antigenicity"
- NIH Reference E–292–2007, entitled "Deletions in Domain II of Pseudomonas Exotoxin A that Reduce Non-Specific Toxicity"
- NIH Reference E–174–2011, entitled "Pseudomonas Exotoxin A with Less Immunogenic T-Cell and/or B-Cell Epitopes"
- NIH Reference E–263–2011, entitled "Pseudomonas Exotoxin A with Less Immunogenic B-Cell Epitopes"

Collaboration Opportunity: Researchers at the NCI seek parties interested in licensing DS–PE24 RITs.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: September 5, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–21906 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; R01/R21/K01/K99 Conflicts.

Date: December 2, 2016.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 7, 2016.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2016–21898 Filed 9–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2016–N153; FXES11130300000–167–FF03E00000]

Endangered and Threatened Wildlife and Plants; Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to enhance the survival of endangered or threatened species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: We must receive any written comments on or before October 13, 2016.

ADDRESSES: Send written comments by U.S. mail to the Regional Director, Attn: Carlita Payne, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Carlita Payne, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless the activities are specifically authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies and the public to comment on the following applications. Please refer to the permit number when you submit comments. Documents and other information the applicants have submitted with the applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Applications

Proposed activities in the following permit requests are for the recovery and enhancement of survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE04397C	Giorgianna G. Auteri.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), gray bat (*Myotis grisescens*).	Rangewide ...	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE04398C	Robert J. Arndt	Indiana bat, northern long-eared bat.	Rangewide ...	Conduct presence/absence surveys, document habitat use, conduct population monitoring, evaluate impacts.	Capture, handle, radio-tag, release.	New.
TE04399C	Cleveland Museum of Natural History.	Snuffbox mussel (*Epioblasma triquetra*).	Ohio	Collection of dead specimens for museum research collection.	Salvage	New.
TE02560A	Timothy C. Carter	Indiana bat, northern long-eared bat, gray bat.	Rangewide ...	Renew existing permit and amend to add scientific research—white nose syndrome (WNS) treatment trials.	Capture, handle, radio-tag, release, survey within hibernacula; harass within the context of WNS research.	Amend, renew.
TE06844A	U.S. Environmental Protection Agency.	Endangered mussels	Iowa, Kansas, Missouri, Nebraska.	Collection of dead specimens for reference collection.	Salvage	Renew.

National Environmental Policy Act

The proposed activities in the requested permits qualify as categorical exclusions under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the CFR (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

We seek public review and comments on these permit applications. Please refer to the permit number when you submit comments. Comments and materials we receive in response to this notice are available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Dated: September 7, 2016.

Lori H. Nordstrom,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2016–21929 Filed 9–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2016–N145; FXES11120800000–167–FF08EVEN00]

Receipt of Application for Renewal of Incidental Take Permit for Morro Shoulderband Snail; Kellaway Habitat Conservation Plan; Community of Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Thomas R. Kellaway and Doris J. Redmond (permittees), for a renewal of incidental take permit TE48316A (ITP) under the Endangered Species Act of 1973, as amended (Act). The requested a renewal would extend ITP expiration by 5 years from the date of reissuance. The existing ITP authorizes take of the federally endangered Morro shoulderband (=banded dune) snail (*Helminthoglypta walkeriana*) incidental to otherwise lawful activities associated with the construction of one residence on each of two separate but contiguous parcels in Los Osos, an unincorporated community of San Luis Obispo County. If renewed, the ITP would not authorize any additional take of the species.

DATES: Written comments should be received on or before October 13, 2016.

ADDRESSES: *Obtaining Documents:* You may obtain a copy of the HCP by writing to the Ventura Fish and Wildlife Ecological Services Office, Attn: Permit Number TE48316A, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. We will make the HCP available for public inspection by appointment during normal business hours at the above address.

Submitting Comments: Please address written comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, Ventura Fish and Wildlife Office, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service listed the Morro shoulderband (=banded dune) snail as endangered on December 15, 1994 (59 FR 64613). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the "take" of fish or wildlife species listed as endangered or threatened. "Take" is defined under the Act to include the following activities: "[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. "Incidental Take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The Kellaway HCP area includes two existing legal parcels of 5.08 acres and 0.45 acre, legally described as Assessor Parcel Numbers 074–022–042 and 074–483–052, respectively. Both are located between Seahorse Lane and San Leandro Court in the southwestern portion of the unincorporated community of Los Osos, San Luis Obispo County, California. The current ITP authorizes incidental take of Morro shoulderband snail that would result from direct impacts to 1.68 acres of coastal dune scrub, maritime chaparral, and ruderal habitat occupied by this species. Take would be incidental to the otherwise lawful construction of a single-family residence on each of the two parcels, along with limited habitat enhancement on the larger of the parcels.

Incidental Take Permit

The ITP was issued on September 21, 2011, and expires on September 20, 2016. The process to obtain a Coastal Development Permit from the California Coastal Commission took much longer than anticipated and required a project redesign. This redesign did not exceed the 1.68-acre development area or change the amount or form of take of Morro shoulderband snail currently authorized in the ITP. The permittees have requested no change to the covered species, covered activities, or HCP area and commit to fully implement the HCP. Measures to minimize the amount and form of take include the following: (1) Pre-construction and construction monitoring surveys for Morro shoulderband snail within the 1.68-acre impact area, (2) capture and moving of all identified individuals of Morro shoulderband snail into the conservation easement area by an individual in possession of a current valid recovery permit for the species, (3) installation of protective fencing, and (4) development and presentation of a contractor and employee training program for Morro shoulderband snail. Mitigation for unavoidable take of Morro shoulderband snail includes: (1) Preservation in perpetuity of 3.83 acres of coastal dune scrub and maritime chaparral habitats occupied by Morro shoulderband snail in a conservation easement that will preclude any use not consistent with resource management, (2) enhancement of 0.24 acres of disturbed coastal dune scrub within the conservation easement to increase its value and function for Morro shoulderband snail, (3) post-construction monitoring and maintenance of the habitat enhancement activities within conservation easement area for a period of 4 years to ensure its success, and (4) establishment of a Letter of Credit in the amount of $16,740 to ensure that adequate funding is available to implement all of the minimization and mitigation measures contained in the plan.

Our Preliminary Determination

The Service has made a preliminary determination that ITP renewal would not represent a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA). As such, it will not have, individually or cumulatively, more than a negligible effect on the species covered in the HCP. Therefore, we have determined that the incidental take permit for this project is ''low effect'' and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by 43 CFR 46.205 and 43 CFR 46.210.

Public Comments

If you wish to comment on the permit renewal and/or HCP, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: August 26, 2016.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2016–21930 Filed 9–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Renewal of Agency Information Collection for Acquisition of Trust Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Indian Affairs (BIA) published a notice in the **Federal Register** on August 30, 2016, requesting the Office Management and Budget (OMB) renew the Agency Information Collection for Acquisition of Trust Land, OMB Control Number 1076–0100. The notice contained an incorrect title.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action, telephone: (202) 273–4680, email: *elizabeth.appel@bia.gov.*

Correction

In the **Federal Register** of August 30, 2016, in FR Doc. 2016–20811 on page 59652, in the first column, correct the title of the notice to read:

Renewal of Agency Information Collection for Acquisition of Trust Land

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–21917 Filed 9–12–16; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1017]

Certain Quartz Slabs and Portions Thereof (II); Commission Decision Not To Review an Initial Determination Terminating the Investigation Based Upon Withdrawal of the Complaint; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 2), which terminated the investigation on the basis of withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Office of the General

Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 16, 2016, based on a complaint filed by Cambria Company LLC (Cambria) of Belle Plaine, Minnesota. 81 FR 54600–1 (Aug. 16, 2016). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain quartz slabs and portions thereof. The alleged violation of section 337 is based upon infringement of U.S. Patent No. D712,666; U.S. Patent No. D712,670; U.S. Patent No. D751,298; U.S. Patent No. D712,161; and U.S. Patent No. D737,058. The notice of investigation named as the respondents: Stylen Quaza LLC DBA Vicostone USA of Dallas, Texas; Vicostone Joint Stock Company of Vietnam; Building Plastics, Inc. of Memphis, Tennessee; Fasa Industrial Corporation, Ltd. of China; Foshan FASA Building Material Co., Ltd. of China; Solidtops LLC, of Oxford, Maryland; Dorado Soapstone LLC of Denver, Colorado; and Pental Granite and Marble Inc. (Pental) of Seattle, Washington. 81 FR 54601. The Office of Unfair Import Investigations was also named as a party. *Id.*

On August 23, 2016, Cambria moved to terminate the investigation in its entirety based upon withdrawal of the complaint. On August 24, 2016, respondent Pental responded that it does not oppose the motion to terminate, but strongly denies the allegations against it set forth in Cambria's complaint. On August 24, 2016, the Commission investigative attorney responded in support of the motion.

On August 25, 2016, the ALJ granted the motion as the subject ID (Order No. 2). The ALJ found that the motion complied with Commission Rules, and that extraordinary circumstances did not exist to prevent granting the motion. *Id.* at 3; *see* 19 CFR 210.21(a). No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: September 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–21903 Filed 9–12–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1018]

Certain Athletic Footwear; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 10, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Reebok International Ltd. of Canton, Massachusetts and Reebok International Limited of England. Supplements were filed on August 12, 19, and 25, 2016. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain athletic footwear by reason of infringement of certain claims of U.S. Patent No. 7,637,035 ("the '035 patent") and U.S. Patent No. 8,505,221 ("the '221 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 7, 2016, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain athletic footwear by reason of infringement of one or more of claims 1, 2, 9–15, 18, 19, and 23–27 of the '035 patent and claims 1, 5, 6, and 11–15 of the '221 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Reebok International Ltd., 1895 J.W. Foster Boulevard, Canton, MA 02021.

Reebok International Limited, 11/12 Pall Mall, London SW1Y 5LU, England.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

TRB Acquisitions LLC, 34 West 33rd Street, 5th Floor, New York, NY 10001.

RBX Active 01 LLC, 34 West 33rd Street, 5th Floor, New York, NY 10001.

RBX Direct LLC, 34 West 33rd Street, 5th Floor, New York, NY 10001.

RBX.COM LLC, 34 West 33rd Street, 5th Floor, New York, NY 10001.

Elite Performance Footwear, LLC, 10 West 33rd Street, Suite 804, New York, NY 10001.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–21971 Filed 9–12–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. U.S.-Morocco FTA–103–030]

Probable Economic Effect of Certain Modifications to the U.S.-Morocco FTA Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and opportunity to provide written comments.

SUMMARY: Following receipt of a request on August 24, 2016, from the United States Trade Representative (USTR), the Commission instituted investigation No. 103–030, *Probable Economic Effect of Certain Modifications to the U.S.-Morocco FTA Rules of Origin,* for the purpose of providing the advice required under § 104(1) of the United States-Morocco Free Trade Agreement Implementation Act.

DATES: October 13, 2016: Deadline for filing written submissions.

January 24, 2017: Transmittal of Commission report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project leader Mahnaz Khan (202–205–2046 or *mahnaz.khan@usitc.gov*) or deputy project leader Heidi Colby-Oizumi (202–205–3391 or *heidi.colby@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

BACKGROUND: In his request letter, the USTR stated that U.S. negotiators have recently reached agreement in principle with representatives of the government of Morocco on certain proposed modifications to the textile and apparel goods rules of origin contained in the U.S.-Morocco Free Trade Agreement (U.S.-Morocco FTA). The USTR noted that § 203(j)(2)(B)(i) of the United States-Morocco Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of § 104 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with Morocco pursuant to Annex 4.3 of the FTA. The USTR further stated that one of the requirements set out in § 104(1) is that the President obtain advice regarding the proposed action from the U.S. International Trade Commission.

In his request letter, the USTR asked that the Commission provide advice on the probable economic effect of the proposed modifications on U.S. trade under the U.S.-Morocco FTA, total U.S. trade, and on domestic producers of the affected articles. The affected articles identified in the proposal are certain apparel goods, including dresses, skirts, blouses, tops, shirts, shirt-blouses, and pants. The request letter and the complete list of proposed modifications are available on the Commission's Web site at *https://www.usitc.gov/research_and_analysis/what_we_are_working_on.htm*. As requested, the Commission will provide its advice to USTR by January 24, 2017.

WRITTEN SUBMISSIONS: No public hearing is planned for this investigation. However, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions should be received not later than 5:15 p.m., October 13, 2016. All written submissions must conform with the provisions of § 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

CONFIDENTIAL BUSINESS INFORMATION: Any submissions that contain confidential business information must also conform to the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR. As requested, the Commission will issue a public version of its report, with any confidential business information deleted, shortly after it transmits its report. All information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a manner that would reveal the operations of the firm supplying the information.

SUMMARIES OF WRITTEN SUBMISSIONS: The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will identify the name of the organization furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: September 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–21974 Filed 9–12–16; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Request for applications.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. To assist in its examination duties mandated by ERISA, the Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The current Advisory Committee members' terms expire on February 28, 2017. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the March 1, 2017–February 28, 2019, term.

DATES: Applications for membership on the Advisory Committee must be received by the Executive Director of the Joint Board, by no later than December 6, 2016.

ADDRESSES: Mail or deliver applications to: Patrick W. McDonough, Executive Director, Joint Board for the Enrollment of Actuaries, Return Preparer Office SE:RPO, Internal Revenue Service, 1111 Constitution Avenue NW., REFM, Park 4, Floor 4, Washington, DC 20224. Send applications electronically to: *nhqjbea@irs.gov.* See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director, at *nhqjbea@irs.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs.

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) recommending topics for inclusion on the Joint Board examinations, (2) reviewing and drafting examination questions, (3) recommending examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Members are appointed for a 2-year term. The upcoming term will begin on March 1, 2017, and end on February 28, 2019. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint several members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally-registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

Advisory Committee members are appointed as Special Government Employees (SGEs). As such, members are subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications may be submitted by regular mail, overnight and express delivery services, and email. In all cases, the cover letter must contain an original signature. Applications must be received by December 6, 2016.

Dated: September 6, 2016.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2016–21950 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 8–16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Tuesday, September 27, 2016: 10:00 a.m.—Oral hearing on Objection to Commission's Proposed Decision in Claim No. LIB–III–018.

11:30 a.m.—Issuance of Proposed Decisions in claims against Iraq.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2016–22112 Filed 9–9–16; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; ETA Quick Turnaround Surveys

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This information collection is subject to the Paperwork Reduction Act of 1995 (PRA), (44 U.S.C. 3506(c)(2)(A)). A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DATES: Consideration will be given to all written comments received by November 14, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Richard Muller by telephone at (202) 693–3680, TTY (202) 693–7755, (these are not toll-free numbers) or by email at *muller.richard@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research, Attention: Richard Muller, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210; by email: *muller.richard@dol.gov;* or by Fax (202) 693–2766.

FOR FURTHER INFORMATION CONTACT: Contact Richard Muller by telephone at (202) 693–3680 (this is not a toll-free number) or by email at *muller.richard@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: ETA is soliciting comments regarding a revision to the current Office of Management and Budget (OMB) clearance for a series of quick turnaround surveys in which data will be collected from State workforce agencies, local workforce investment areas, and other entities involved in employment and training and related programs. The surveys will focus on a variety of issues concerning the very broad spectrum of programs administered by ETA including but not limited to the governance, administration, funding, service design, and delivery structure of workforce programs authorized by the Workforce Innovation Opportunities Act of 2014 (WIOA) and other statutes.

ETA has a continuing need for information on the operation of all of its programs and is seeking another extension of the clearance for conducting a series of 8 to 20 separate surveys over the next 3 years. Each survey will be short (typically 10–30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local workforce boards, American Job Centers, employment service offices, or other entities involved in employment and training or related activities. Each survey will be designed on an ad hoc basis and will focus on topics of pressing policy interest. Examples of broad topic areas include:

- Local management information system developments
- New processes and procedures
- Services to different target groups
- Integration and coordination with other programs
- Local workforce investment board membership and training

ETA needs quick turnaround surveys for a number of reasons. The most pressing reason concerns the need to understand key operational issues in light of changes in focus deriving from the Administration's policy priorities. ETA needs timely information that identifies the scope and magnitude of various practices or problems, and to fulfill its obligations to develop high quality policy, research, administrative guidance, regulations, and technical assistance.

ETA will request data in the quick turnaround surveys that are not otherwise available. Other research and evaluation efforts, including case studies or long-range evaluations, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information and data are too limited. The Five-Year Workforce Investment Plans, developed by States and local areas, are too general in nature to meet ETA's specific informational needs. Quarterly or annual data reported by States and local areas do not provide information on key operational practices and issues. Thus, ETA has no alternative mechanism for collecting precise information that both identifies the scope and magnitude of emerging issues and provides the information on a quick turnaround basis.

ETA will make every effort to coordinate the quick turnaround surveys with other research it is conducting, in order to ease the burden on local and State respondents, to avoid duplication, and to fully explore how interim data and information from each study can be used to inform other studies. Information from the quick turnaround surveys will complement but not duplicate other ETA reporting requirements or evaluation studies.

Section 169 of WIOA authorizes this information collection for both evaluation activities (Section 169 (a)) and research activities (Section 169 (b)).

CURRENT ACTION: The Department of Labor (DOL), Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, "Quick Turnaround Surveys." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the PRA.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected;
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1205–0436.

Submitted comments will also be a matter of public record for this ICR and posted on the Internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

Agency: DOL–DOL–ETA.

Type of Review: REVISION.

Title of Collection: Quick Turnaround Surveys.

Form: N/A.

OMB Control Number: 1205–0436.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for profit institutions.

Estimated Number of Respondents: 620.

Frequency: Various.

Total Estimated Annual Responses: 25,000.

Estimated Average Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 8,333 hours.

Total Estimated Annual Other Cost Burden: $0.

Portia Wu,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2016–21916 Filed 9–12–16; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–064)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 3, 2016, 11:00 a.m.–5:00 p.m.; and Tuesday, October 4, 2016, 11:00 a.m.–5:00 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number 1–877–601–4492 or toll number 1–773–756–4808, passcode 7555144, to participate in this meeting by telephone on both days. The WebEx link is *https://nasa.webex.com/;* the meeting number on October 3 is 992 939 742, password is Astrophysics!1; and the meeting number on October 4 is 992 964 807, password is Astrophysics!1.

The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Updates on Specific Astrophysics Missions
—Reports From the Program Analysis Groups
—Reports From Specific Research and Analysis Programs
—Report on the National Academies Midterm Review

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Carol J. Hamilton,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–21981 Filed 9–12–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 13, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0163.

Type of Review: Reinstatement with change of a previously approved collection.

Title: Privacy of Consumer Financial Information Recordkeeping and Disclosure Requirements Under Gramm-Leach-Bliley Act and Regulation P, 12 CFR 1016.

Abstract: Title V, Subtitle A of the Gramm-Leach-Bliley Act (Act), Public Law 106–102, governs the treatment of nonpublic personal information about consumers by financial institutions. Section 502 of the Act, subject to certain exceptions, prohibits a financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies various notice and opt-out requirements, and provided the consumer has not elected to opt out of the disclosure. Section 503 of the Act requires a financial institution to provide notice of its privacy policies and practices to its customers.

Section 504 of the Act granted rulemaking authority for the privacy provisions of the Act to be shared by eight Federal agencies: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC). Each of the agencies issued rules (which were consistent and comparable) to implement the Act's privacy provisions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) amended a number of consumer financial protection laws, including the Act. Among other changes, the DFA transferred rulemaking authority for most of Subtitle A of Title V of the Act, with respect to financial institutions described in section 504(a)(1)(A) of the Act, from FRB, FDIC, OCC, OTS, and NCUA to the Consumer Financial Protection Bureau (CFPB). Pursuant to the DFA and the Act, as amended, the CFPB promulgated Regulation P, 12 CFR 1016, to implement those privacy provisions of the Act for which CFPB has rulemaking authority.

Regulation P implements the requirements of the Act to provide consumers with financial institutions' privacy policies and practices, as well as describes when the consumer's information may be shared with nonaffiliated third parties, and provides a method for consumers to prevent disclosure of their information to nonaffiliated third parties by opting out of that disclosure. Regulation P details the specifics of how the Act should be implemented, which companies and situations this applies to, and the method of delivering the information to consumers. Regulation P includes model forms that can be used to comply with the disclosure requirements of the Act and Regulation P, although the use of the model forms is not required. See Appendix to Regulation P.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 386,104.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on September 7, 2016.

Dated: September 8, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–21942 Filed 9–12–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Geosciences (1755).

DATES AND TIMES: October 19, 2016; 8:30 a.m.–5:00 p.m., October 20, 2016; 8:30 a.m.–2:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Stafford I, Room 1235, Arlington, Virginia 22230.

TYPE OF MEETING: Open.

CONTACT PERSON: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

MINUTES: May be obtained from the contact person listed above.

PURPOSE OF MEETING: To provide advice, recommendations, and oversight on support for geoscience research and education including atmospheric, geo-space, earth, ocean and polar sciences.

Agenda:

Wednesday, October 19, 2016

- Directorate and NSF activities and plans
- Committee of Visitor Reports
- Update on GEO Education Activities
- Presentation on Reproducibility of Research Results
- Meeting with the NSF Director and CIO

Thursday, October 20, 2016

- Division Subcommittee Meetings
- Briefing on NSF Activities Related to Broader Participation and Broader Impacts
- Action Items/Planning for Spring 2017 Meeting

Dated: September 8, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–21955 Filed 9–12–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0188]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 16, 2016, to August 29, 2016. The last biweekly notice was published on August 30, 2016.

DATES: Comments must be filed by October 13, 2016. A request for a hearing must be filed by November 14, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0188. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2242, email: *Paula.Blechman@nrc.gov.*

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0188, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0188.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0188, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to issuance of the amendment to the subject facility operating license or combined license. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest. The petition must also set forth the specific contentions which the petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by November 14, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter "petition"), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 30, 2016. A publicly-available version is in ADAMS under Accession No. ML16194A342.

Description of amendment request: The amendments would revise the Technical Specification (TS) requirements for the auxiliary feedwater (AFW) system. The proposed changes include conforming administrative changes to the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change requires that three AFW steam supplies must be operable. The AFW system is not an initiator of any accident previously evaluated; therefore, the probability of occurrence of an accident is not significantly affected by the proposed changes. The change does not involve a significant increase in the consequences of an accident because three steam supplies are needed to ensure that the AFW system can perform its specified function for all postulated events in the presence of a single failure. The proposed changes do not adversely impact the ability of the AFW system to mitigate the consequences of accidents previously evaluated because the proposed change reduces the allowable out of service time for a single inoperable steam supply.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change requires that three steam supplies are available to ensure that the AFW system can perform its specified function in the presence of a single failure. As such, the proposed change adds a more restrictive requirement than currently exists because the LCO [limiting condition for operation] can no longer be met with only two AFW steam supplies operable.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed change does not create any new failure modes for existing equipment or any new limiting single failures. Additionally, the proposed change does not involve a change in the methods governing normal plant operation, and all safety functions will continue to perform as previously assumed in the accident analyses. Thus, the proposed change does not adversely affect the design function or operation of any plant structures, systems, or components.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a more restrictive requirement than currently exists because the LCO can no longer be met with only two AFW steam supplies operable. The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis. The proposed amendment does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The change does not adversely impact plant operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Acting Branch Chief: Tracy J. Orf.

South Carolina Electric and Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: June 2, 2016. A publicly-available version is in ADAMS under Accession No. ML16154A226.

Description of amendment request: The proposed changes revise the Combined Licenses (COL) concerning the design details of the safety-related passive core cooling system (PXS), the nonsafety-related normal residual heat removal system (RNS), and the nonsafety-related containment air filtration system (VFS). The amendment request proposes changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the plant-specific Design Control Document (DCD) Tier 2 information, and involves changes to related plant-specific DCD Tier 1 information, with corresponding changes to the associated COL Appendix C information. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSCs) accident initiator or initiating sequence of events. The proposed changes result from identifying PSX, RNS, and VFS piping lines required to be described in the licensing basis as ASME [American Society of Mechanical Engineers] Code Section III, evaluated to meet the LBB [leak-before-break] design criteria, or designed to withstand combined normal and seismic design basis loads without a loss of functional capability. Neither planned or inadvertent operation nor failure of the PXS, RNS, or VFS is an accident initiator or part of an initiating sequence of events for an accident previously evaluated. Therefore, the probabilities of the accidents evaluated in the UFSAR are not affected.

The proposed changes do not have an adverse impact on the ability of the PXS, RNS, or VFS to perform their design functions. The design of the PXS, RNS, and VFS continues to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. In addition, the changes ensure that the capabilities of the PXS, RNS, and VFS to mitigate the consequences of an accident meet the applicable regulatory acceptance criteria, and there is no adverse effect on any safety-related SSC or function used to mitigate an accident. The changes do not affect the prevention and mitigation of other abnormal events, *e.g.,* anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes result from identifying PXS, RNS, and VFS piping lines required to be described in the licensing basis as ASME Code Section III, evaluated to meet the LBB design criteria, or designed to withstand combined normal and seismic design basis loads without a loss of functional capability. These proposed changes do not adversely affect any other PXS, RNS, VFS, or SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins. The proposed changes ensure that PXS, RNS, and VFS design requirements and design functions are met. The proposed changes maintain existing safety margin through continued application of the existing requirements of the UFSAR, while adding additional design features to ensure the PXS, RNS, and VFS perform the design functions required to meet the existing safety margins. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, no margin of safety is reduced.

Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: July 1, 2016. A publicly-available version is in ADAMS under Accession No. ML16188A268.

Description of amendment request: The amendment would revise Technical Specification (TS) 5.5.12, "Primary Containment Leakage Rate Testing Program," by (1) increasing the existing Type A integrated leak test program test interval from 10 to 15 years in accordance with Nuclear Energy Institute (NEI) topical report NEI 94–01, Revision 3–A, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J" (ADAMS Accession No. ML12221A202), and the conditions and limitations specified in NEI 94–01, Revision 2–A (ADAMS Accession No. ML100620847); (2) extending the containment isolation valve leakage test (Type C) frequency from 60 months to 75 months in accordance with NEI 94–01, Revision 3–A; (3) adopting the use of the American National Standards Institute/American Nuclear Society 56.8–2002, "Containment System Leakage Testing Requirements;" and (4) adopting a more conservative grace interval of 9 months for Type A, Type B, and Type C leakage test in accordance with NEI 94–01, Revision 3–A.

Additionally, the amendment would also delete the information from TS 5.5.12 regarding the performance of Type A tests for Unit Nos. 1 and 2 in 2008 and 2010, respectively, on the basis that both tests have already occurred.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the Technical Specifications (TS) involves the extension of the Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions. The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. The change in Type A test frequency from three in ten years to one in fifteen years, measured as an increase in the total integrated plant dose risk for those accident sequences influenced by Type A testing, is 9.90E–03 person-rem/yr using the Electric Power Research Institute (EPRI) guidance values, and drops to 1.96E–03 person-rem/yr using the EPRI Expert Elicitation values. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

In addition, as documented in NUREG–1493, "Performance-Based Containment Leak-Test Program," Types B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The HNP, Units 1 and 2 Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based, and, (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leakage rate test (LLRT) requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with American Society of Mechanical Engineers (ASME) Section XI, and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed extensions do not significantly increase the consequences of an accident previously evaluated. The proposed amendment also deletes exceptions previously granted to allow onetime extensions of the ILRT [integrated leak rate test] test frequency for both Units 1 and 2. These exceptions were for activities that have already taken place; therefore, their deletion is solely an administrative action that has no effect on any component and no physical impact on how the units are operated.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the HNP, Unit 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident. The proposed change does not involve a physical change to the plant (*i.e.*, no new or different type of equipment will be installed) nor does it alter the design, configuration, or change the manner in which the plant is operated or controlled beyond the standard functional capabilities of the equipment.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for both Units 1 and 2. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that does not result in any change in how the units are operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to TS 5.5.12 involves the extension of the HNP, Units 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests and Type C tests for HNP, Units 1 and 2. The proposed surveillance interval extension is bounded by the 15-year ILRT Interval and the 75-month Type C test interval currently authorized within NEI 94–01, "Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J," Revision 3–A. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A and Type C test intervals.

The proposed amendment also deletes exceptions previously granted to allow one time extensions of the ILRT test frequency for both HNP Units 1 and 2. These exceptions were for activities that have taken place; therefore, their deletion is solely an administrative action and does not change how the units are operated and maintained. Thus, there is no reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: July 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16207A496.

Description of amendment request: The amendment request proposes changes to plant-specific Tier 1 information, with corresponding changes to the associated combined license (COL) Appendix C information, and involves associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific design control document Tier 1 material departures. Specifically, the requested amendment proposes clarifications to a plant-specific Tier 1 (and COL Appendix C) table and a UFSAR table in regard to the inspections of the excore source, intermediate, and power range detectors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with Nuclear Regulatory Commission (NRC) staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post-loss of coolant accident (LOCA) containment environment due to detector materials. The proposed change does not alter any safety related functions. The materials of construction are compatible with the post [-]LOCA conditions inside containment and will not significantly contribute to hydrogen generation or chemical precipitates. The change does not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events. The change does not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. Consequently, the plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post[-]LOCA containment environment due to detector materials. In addition, the proposed change to the [inspection, test, analysis, and acceptance criteria (ITAAC)] verified materials of construction does not alter the design function of the excore detectors. The detector canning materials of construction are compatible with the post-LOCA containment environment and do not contribute a significant amount of hydrogen or chemical precipitates. The change to the ITAAC aligns the inspection with the Tier 2 design feature. Consequently, because the excore detectors functions are unchanged, there are no adverse effects on accidents previously evaluated in the UFSAR.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to specify the inspection of the excore source, intermediate, and power range detectors is done to verify that aluminum surfaces are contained in stainless steel or titanium, and avoids the introduction of aluminum into the post-LOCA containment environment, does not alter any safety-related equipment, applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: June 14, 2016, as revised on August 12, 2016. A publicly-available version is in ADAMS under Accession Nos. ML16166A409 and ML16225A655, respectively.

Description of amendment request: The amendment request proposes changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2* and associated Tier 2 information. Specifically, the proposed departures consist of changes to the UFSAR to revise the details of the structural design of auxiliary building floors.

A biweekly **Federal Register** notice was published on August 2, 2016, providing an opportunity to comment, request a hearing, and petition for leave to intervene for a License Amendment Request (LAR) for the VEGP combined licenses. Since that time, the licensee has submitted a revision to the original LAR, dated August 12, 2016, that increases the scope of the LAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the auxiliary building floors are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the auxiliary building. The auxiliary building is a seismic Category I structure and is designed for dead, live, thermal, pressure, safe shutdown earthquake loads, and loads due to postulated pipe breaks. The proposed changes to UFSAR descriptions and figures are intended to address changes in the detail design of floors in the auxiliary building. The thickness and strength of the auxiliary building floors are not reduced. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the changes described create any new accident precursors. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes to UFSAR descriptions are proposed to address changes in the detail design of floors in the auxiliary building. The thickness, geometry, and strength of the structures are not adversely altered. The concrete and reinforcement materials are not altered. The properties of the concrete are not altered. The changes to the design details of the auxiliary building structure do not create any new accident precursors. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The criteria and requirements of American Concrete Institute (ACI) 349 and American Institute of Steel Construction (AISC) N690 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to criteria and requirements in ACI 349 and AISC N690 and therefore maintains the margin of safety. Analysis of the connection design confirms that code provisions are appropriate to the floor to wall connection. The proposed changes to the UFSAR address changes in the detail design of floors in the auxiliary building. The proposed changes also incorporate the requirements for development and anchoring of headed reinforcement which were previously approved. There is no change to design requirements of the auxiliary building structure. There is no change to the method of evaluation from that used in the design basis calculations. There is not a significant change to the in structure response spectra. Therefore, the proposed amendment does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: June 7, 2016. A publicly-available version is in ADAMS under Accession No. ML16159A403.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to allow use of component cooling system (CCS) pump 2B–B to support CCS Train 1B operability when the normally-aligned CCS pump is inoperable. The amendment would provide increased flexibility for maintaining CCS operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change to allow the use of the CCS pump 2B–B to support Train 1B operability does not result in any physical changes to plant safety-related structures, systems, or components (SSCs). The CCS functions to remove plant system heat loads during normal, shutdown, and accident conditions. The CCS will continue to perform this function with equipment qualified to the same standards. The CCS is not an accident initiator, but instead performs accident mitigation functions by serving as the heat sink for safety-related equipment, ensuring the conditions and assumptions credited in the accident analyses are preserved. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The purpose of this change is to modify the CCS TS to allow the use of CCS pump 2B–B to replace CCS pump C–S in supporting Train 1B operability. The proposed change provides assurance that the minimum conditions necessary for the CCS to perform its heat removal safety function are maintained. Accordingly, operation as specified by the addition of the Notes and the additional surveillance requirement will provide the necessary assurance that fuel cladding, reactor coolant system pressure boundary, and containment integrity limits are not challenged during worst-case pos[t]-accident conditions. CCS pump C–S and pump 2B–B are identical pumps with identical controls except that the CCS pump 2B–B does not receive an automatic start signal from a Unit 1 Safety Injection (SI) actuation signal. To compensate for the lack of the SI actuation signal, CCS pump 2B–B is required to be in operation to support Unit 1 operation when substituting for CSS pump C–S. With the CCS pump 2B–B in operation, the pump will continue to operate following a SI actuation signal. Accordingly, the conclusions of the accident analyses will remain as previously evaluated such that there will be no significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical changes to plant safety-related SSCs or alter the modes of plant operation in a manner that will change the design function or operation of the CCS. The proposed additional limits on CCS alignment and CCS pump 2B–B operation provide assurance that the conditions and assumptions credited in the accident analyses are preserved. Thus, the plant's overall ability to reject heat to the ultimate heat sink during normal operation, normal shutdown, and worst-case accident conditions will not be significantly affected by this proposed change. Because the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new credible failure mechanisms, malfunctions, or accident initiators are created, and there will be no effect on the accident mitigating systems in a manner that would significantly degrade the plant's response to an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change modifies the CCS TS to maintain the CCS Train 1B operable while aligned with CCS pump 2B–B. With CCS pump 2B–B in operation when aligned to CCS Train 1B, CCS pump 2B–B will operate to provide the CCS accident mitigation function if a postulated accident occurs. CCS pumps C–S and 2B–B are identical pumps and will perform the same function with this change, resulting in essentially no change in the safety margin before the change to the safety margin after the change. Accordingly, the proposed change will not significantly reduce the margin of safety of any SSCs that rely on the CCS for heat removal to perform their safety-related functions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A Tower West, Knoxville, TN 37902.

NRC Acting Branch Chief: Tracy J. Orf.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: May 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16137A572.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to correct an administrative error regarding the steam generator (SG) narrow range (NR) level specified in Surveillance Requirement (SR) 3.4.6.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The WBN Unit 2 TS SR 3.4.6.3 is being amended due [to] an administrative error that was incorporated into the initial submittal of the WBN Unit 2 Revision 0 TS. The impact of this amendment will not affect how plant equipment is operated or maintained. This proposed amendment corrects an error in the required SG NR level minimum value, while in Mode 4, from 32% to 6%. The purpose for this SR is to ensure the steam generator u-tubes are covered with water on the secondary side of the tubes. For the WBN Unit 2 SGs the lower SG NR level tap is above the top of the U-tubes. Therefore, a 6% NR level ensures the U-tubes are covered with water. There are no changes to the physical plant or analytical methods.

The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility. The proposed changes do not affect any design functions, or analyses that verify the capability of structures, systems, and components (SSCs) to perform a design function. The proposed changes do not change any of the accidents previously evaluated in the Final Safety Analysis Report (FSAR). The proposed changes do not affect SSCs, operating procedures, and administrative controls that have the function of preventing or mitigating any of these accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No actual plant equipment or accident analyses will be affected by the proposed amendment. The proposed amendment will not change the design function of any SSCs or result in any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve any physical changes to the plant or alter the manner in which plant systems are intended to be operated, maintained, modified, tested, or inspected. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment will not result in plant operation in a configuration outside the design basis. The proposed amendment does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A Tower West, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: Tracy J. Orf.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Date of application for amendment: January 29, 2016, as supplemented by letters dated June 2 and 10, 2016.

Brief description of amendment: The proposed amendment approved the post- loss-of-coolant-accident drawdown time for secondary containment from 12 to 19 minutes as described in the CPS Updated Safety Analysis Report and technical specification bases.

Date of issuance: August 17, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 210. A publicly-available version is in ADAMS under Accession No. ML16217A332; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–62: The amendment revised the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register****:* April 12, 2016 (81 FR 21599). The supplemental letters dated June 2 and 10, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC (EGC), Docket Nos. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 19, 2015, as supplemented by letter dated April 11, 2016.

Brief description of amendments: The amendments revised LSCS technical specifications (TS), Section 2.1.1, "Reactor Core SLs [safety limits]," to reflect a lower reactor steam dome pressure stated for reactor core SLs, Sections 2.1.1.1 and 2.1.1.2. Specifically, the amendment reduced the reactor steam dome pressure in TS SLs, Sections 2.1.1.1 and 2.1.1.2, from 785 psig [pound per square inch gage] to 700 psia [pound per square inch absolute]. This change to TS, Section 2.1.1, was identified as a result of 10 CFR part 21, General Electric report SC05–03, "Potential to Exceed Low Pressure Technical Specification Safety Limit." This change is valid for the NRC-approved pressure range pertinent to the critical power correlations applied to the fuel types in use at LSCS.

Effective date: As of the date of issuance and the amendment shall be implemented for LSCS, Unit 1, within 30 days of issuance of the amendment. Also, the amendment shall be implemented for LSCS, Unit 2, prior to startup following refueling outage L2R16 in February 2017.

Amendment Nos.: 220 for NPF–11, Unit 1, and 206 for NPF–18, Unit 2. The publicly-available version of documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments in ADAMS under Accession No. ML16155A110.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* February 2, 2016 (81 FR 5497). The supplemental letter dated April 11, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 2016.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant (CNP), Unit 2, Berrien County, Michigan

Date of amendment request: October 19, 2015, as supplemented by letters dated January 21, 2016, and April 18, 2016.

Brief description of amendment: The amendment revised the CNP, Unit 2, technical specification (TS) requirements for the Engineered Safety Feature Actuation System Instrumentation by adding a new Condition for inoperable required channels for main feedwater pump trips, and by adding a footnote to the Applicable Mode column of TS Table 3.3.2–1 to reflect the new Condition.

Date of issuance: August 19, 2016.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment No.: 313. A publicly-available version is in ADAMS under Accession No. ML16216A181; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–74: The amendment revises the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* December 22, 2015 (80 FR 79621). The supplemental letters dated January 21, 2016, and April 18, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated August 19, 2016.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: August 6, 2015, as supplemented by letter dated April 12, 2016.

Brief description of amendment: The amendment revised the value of reactor steam dome pressure specified within the Reactor Core Safety Limits Technical Specification (TS) 2.1.1. This resolved a 10 CFR part 21, condition concerning a potential to momentarily violate Reactor Core Safety Limit (TSs 2.1.1.1 and 2.1.1.2) during a pressure regulator failure maximum demand (Open) transient.

Date of issuance: August 18, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 295. A publicly-available version is in ADAMS under Accession No. ML16153A091; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–49: The amendment revised the License and TSs.

*Date of initial notice in **Federal Register**:* November 10, 2015 (80 FR 69713). The supplemental letter dated April 12, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 2016.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 11, 2015, as supplemented by letter dated April 8, 2016.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) by removing the current stored diesel fuel oil and lube oil numerical volume requirements from the TSs and replacing them with emergency diesel generator operating time requirements consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–501, Revision 1, "Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control," including plant-specific variances.

Date of issuance: August 19, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 289. A publicly-available version is in ADAMS under Accession No. ML16182A363; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–40: The amendment revised the License and TSs.

*Date of initial notice in **Federal Register**:* November 24, 2015 (80 FR 73239). The supplemental letter dated April 8, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 19, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: November 16, 2015, as supplemented by letter dated February 12, 2016.

Brief description of amendment: The amendment authorized changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific Design Control Document Tier 2* information. The proposed changes are related to changes to construction methods and construction sequence used for the composite floors and roof of the auxiliary building.

Date of issuance: June 29, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 49. A publicly-available version is in ADAMS under Accession No. ML16146A734; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined License Nos. NPF–91 and NPF–92: The amendment revised the Facility Combined Licenses.

*Date of initial notice in **Federal Register**:* February 2, 2016 (81 FR 5495). The supplemental letter dated February 12, 2016, provided additional information that did not expand the scope of the amendment request and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated June 29, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 31st day of August 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–21998 Filed 9–12–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0192]

Service Level I, II, III, and In-Scope License Renewal Protective Coatings Applied to Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG)–1331, "Service Level I, II, III, and In-Scope License Renewal Protective Coatings Applied to Nuclear Power Plants." This DG is proposed Revision 3 of Regulatory Guide (RG) 1.54, "Service Level I, II, and III Protective Coatings Applied to Nuclear Power Plants." The NRC proposes to revise the guide to update the latest American Society for Standards and Testing (ASTM) International standards approved for use in the prior revision of this guide. In addition, the NRC proposes to expand the scope of the regulatory guide to address aging management of internal coatings and linings on components within the scope of the NRC's license renewal regulations.

DATES: Submit comments by November 14, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0192. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Matthew G. Yoder, Office of Nuclear Reactor Regulation, telephone: 301–415–4017, email: *Matthew.Yoder@nrc.gov;* and Mark Orr, Office of Nuclear Regulatory Research, telephone: 301–415–6003, email: *Mark.Orr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0192 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0192.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DG is available in ADAMS under Accession No. ML16097A448. The regulatory analysis for this DG is available in ADAMS under Accession No. ML16070A091.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0192 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Service Level I, II, III, and In-Scope License Renewal Protective Coatings Applied to Nuclear Power Plants," is proposed Revision 3 of RG 1.54, "Service Level I, II, and III Protective Coatings Applied to Nuclear Power Plants." The DG is temporarily identified by its task number,DG–1331. This revision (Revision 3) of RG 1.54 approves, with certain clarifications and exceptions, the use of ASTM International Standard D 5144–08ε^1, "Standard Guide for Use of Protective Coating Standards in Nuclear Power Plants," [1] and multiple sub-tier ASTM International standards as identified in the RG. In addition, the NRC proposes to expand the scope of the RG to address aging management of internal coatings and linings on components within the scope of license renewal under part 54 of title 10 of the *Code of Federal Regulations* (10 CFR).

III. Backfitting and Issue Finality

Draft regulatory guide-1331 is proposed Revision 3 of RG 1.54. It proposes to approve, with certain clarifications and exceptions, the use of ASTM International Standard D 5144–08ε^1, "Standard Guide for Use of Protective Coating Standards in Nuclear Power Plants," and multiple sub-tier ASTM International standards as identified in Figure 1 of DG–1331 and described below. The ASTM International Standard D 5144–08ε^1 was issued to provide a common basis on which protective coatings for the surfaces of nuclear power generating facilities may be qualified and selected through reproducible evaluation tests. This revision also expands the scope to include internal coatings and linings on components within the scope of license renewal. Copies of the ASTM International standards identified in DG–1331 are available for purchase from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428–2959; telephone: 610–832–9585. Purchase information is also available through the ASTM Web site at *http://www.astm.org.*

In addition, the NRC made some clarifications and format changes that did not change the intent of the guidance.

If DG–1331 is finalized, it may be applied to current applications for operating licenses, combined licenses, early site permits, and certified design rules docketed by the NRC as of the date of issuance of the final RG, as well as future applications submitted after the issuance of the RG. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52, with certain exclusions discussed below, were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to this general principle are applicable whenever a combined license applicant references a

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[1] The "ε^1" symbol at the end of ASTM International Standard D 5144–08ε^1 is used by ASTM to identify an ASTM International standard that was revised to correct an editorial error. The copyright date of the edited standard is April 2016 which differs from the original 2008 publication date of the standard.

10 CFR part 52 license (*e.g.,* an early site permit) or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC does not, at this time, intend to impose the positions represented in Revision 3 of RG 1.54 on combined license applicants in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC seeks to impose a position in Revision 3 of RG 1.54 in a manner that does not provide issue finality as described in the applicable issue finality provision, then the NRC must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Proposed Revision 3 of RG 1.54 updates the ASTM International standards the NRC staff has approved for use when qualifying and testing protective coatings and linings used in nuclear power plants.

Dated at Rockville, Maryland, this 7th day of September, 2016.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2016–21956 Filed 9–12–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

2016 National Nanotechnology Initiative Strategic Plan; Notice of Availability and Request for Public Comment

ACTION: Notice of Availability and Request for Public Comment.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology; National Science and Technology Council (NSTC); announces the availability of the draft 2016 National Nanotechnology Initiative (NNI) Strategic Plan for public comment. The draft plan is posted at *www.nano.gov/2016strategy.* Comments of approximately one page or less in length are requested.

DATES: Comments must be received by September 23, 2016.

ADDRESSES: The draft 2016 NNI Strategic Plan is available on the NNI Web site, *www.nano.gov/2016strategy.* The public is encouraged to submit comments electronically through *www.nano.gov/2016strategy,* or via email to *2016NNIStrategy@nnco.nano.gov.* Please reference page and line numbers in your response, as appropriate. For individuals who do not have access to the internet, comments may be submitted in writing to: Stacey Standridge, ATTN: NNI Strategic Plan Comments, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Stacey Standridge, National Nanotechnology Coordination Office, 703–292–8103, *sstandridge@nnco.nano.gov.*

SUPPLEMENTARY INFORMATION: The NNI is a U.S. Government R&D program involving 20 departments and independent agencies, 11 of which have budgets for nanotechnology R&D, working together toward the common vision of a future in which the ability to understand and control matter at the nanoscale level leads to a revolution in technology and industry that benefits society. The combined, coordinated efforts of these agencies have accelerated discovery, development, and deployment of nanotechnology towards agency missions and the broader national interest.

The NNI Strategic Plan describes the NNI vision and goals and the strategies by which these goals are to be achieved. The plan includes a description of the NNI investment strategy and the program component areas called for by the 21st Century Research and Development Act of 2003, and it also identifies specific objectives toward collectively achieving the NNI vision. This plan updates and replaces the NNI Strategic Plan of February 2014.

The NNI Strategic Plan provides the framework that underpins the nanotechnology-related activities of the NNI agencies. Its aim is to ensure that advancements in nanotechnology and its applications continue in this vital R&D enterprise, while potential concerns about current and future applications are also addressed. The purpose of the Strategic Plan is to catalyze achievements in support of the goals and vision of the NNI by providing guidance for agency leaders, program managers, and the research community regarding the planning and implementation of Federal nanotechnology R&D investments and activities.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–21796 Filed 9–12–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78782; File No. SR–NYSE–2016–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 907.00 of the NYSE Listed Company Manual To Adjust the Timing of Entitlements to Complimentary Products and Services for Special Purpose Acquisition Companies

September 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 26, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 907.00 of the NYSE Listed Company Manual (the "Manual") to adjust the service entitlements of special purpose acquisition companies ("SPACs") under that rule. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 907.00 of the Manual to adjust the service entitlements of special purpose acquisition companies ("SPACs") under that rule.

The Exchange offers complimentary products and services for a period of 24 calendar months from the date of initial listing to a category of listed companies defined as Eligible New Listings. Eligible New Listings include: (I) Any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security on the Exchange under Section 102.01 or 103.00 of the Manual for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering and (ii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering).

Eligible New Listings are eligible for services as a Tier A or Tier B company as follows:

- Tier A: For Eligible New Listings with a global market value of $400 million or more, calculated as of the date of listing on the Exchange, the Exchange offers market surveillance, market analytics, Web-hosting, Web-casting, corporate governance tools, and news distribution products and services for a period of 24 calendar months from the date of listing.
- Tier B: For Eligible New Listings with a global market value of less than $400 million, calculated as of the date of listing on the Exchange, the Exchange offers Web-hosting, market analytics, Web-casting, corporate governance tools, and news distribution products and services for a period of 24 calendar months from the date of listing.

Notwithstanding the foregoing, however, if an Eligible New Listing begins to use a particular product or service provided for under Section 907.00 within 30 days of its initial listing date, the complimentary period will begin on the date of first use.[4]

A SPAC is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more operating businesses or assets. To qualify for initial listing a SPAC must meet the requirements of Section 102.06 and 102.01A of the Manual.[5] Section 102.06 of the Manual provides that the Exchange will consider on a case-by-case basis the appropriateness for listing of SPACs that conduct an initial public offering of which at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the SPAC's equity securities, will be held in a trust account controlled by an independent custodian (the "Trust Account") until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust) (a "Business Combination" or the "Business Combination Condition"). Under Section 102.06, the SPAC must be liquidated if no Business Combination has been consummated within a specified time period not to exceed three years. The Exchange will promptly commence delisting procedures with respect to any SPAC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter.

The Exchange now proposes to amend Section 907.00 to exclude newly-listed SPACs from the definition of Eligible New Listings. In lieu of receiving these services at the time of initial listing, the proposed amended rule would treat a SPAC that remains listed after meeting the Business Combination Condition as an Eligible New Listing and would provide the services to which that status would entitle it for 24 months from the date of meeting the Business Combination Condition.

The Exchange believes this approach is appropriate in light of the special characteristics of a SPAC. SPACs raise money on a one-time basis and typically trade at a price that is very close to their liquidation value. As such, SPAC managements are typically not focused on their stock price and investor relations to the same degree as operating companies are. As the services provided to Eligible New Listings are targeted in large part on those market-driven concerns of newly-listed operating companies, they are less useful to SPACs. A SPAC that has met the Business Combination Condition, on the other hand, is similarly situated to a newly-formed publicly-traded operating company and the Exchange believes that the services provided to Eligible New Listings will be as relevant and attractive to a SPAC that has met the Business Combination Condition as to the newly-listed operating companies that are generally eligible for those services.

The Exchange believes that companies will often require a period of time after meeting the Business Combination Condition to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies may not be able to begin using the suite of products offered to them immediately on becoming eligible. To address this issue, the Exchange proposes to specify in Section 907.00 that if a SPAC that has met the Business Combination Condition begins using a particular service within 30 days after the date of meeting the Business Combination Condition, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the date the SPAC meets the Business Combination Condition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)[8] of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract and retain listings and respond to competitive pressures. As SPACs are unlikely to utilize the services available to them currently at the time of initial listing but would likely find those services useful if they remain listed after they meet the Business Combination Condition, the Exchange believes it is reasonable to shift the time when SPACs are eligible for the services available to Eligible New Listings to the period immediately after meeting the Business Combination Condition.

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[4] The Exchange does not propose to make any changes in this filing to the values of the various services set forth above as provided to eligible listed companies as specified in Section 907.00.

[5] Section 102.06 refers to SPACs as "acquisition companies" or "ACs."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

The Exchange believes that it is not unfairly discriminatory to provide SPACs with the applicable services only if and when they meet the Business Combination Condition. The Exchange recognizes that not all SPACs will meet the Business Combination Condition and that some listed SPACs will therefore never become eligible for the services that would be provided to an otherwise similarly qualified operating company. However, given the specific characteristics of the SPAC structure, these services are generally not of any particular value to a SPAC prior to meeting the Business Combination Condition and the Exchange therefore believes that those SPACs that never qualify for the services will not suffer any meaningful detriment as a consequence.

Allowing SPACs up to 30 days after meeting the Business Combination Condition to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their becoming eligible for those services. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In many cases, SPACs will consider transferring to a new listing venue at the time they meet the Business Combination Condition. The proposed rule change enables the Exchange to compete for the retention of these companies by offering them a package of complimentary products and services that assist their transition to being a publicly listed operating company for the first time. All similarly situated companies are eligible for the same package of services. Therefore, the proposed amendment to Section 907.00 will increase competition by enabling the Exchange to more effectively compete for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–58 and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21914 Filed 9–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78780; File No. SR–NYSEMKT–2016–87]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 903 and Rule 900.2NY(50)

September 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 6, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903 and Rule 900.2NY(50). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Rule 903 and Rule 900.2NY(50), so as to allow the listing and trading of options with Wednesday expirations.

Currently, under the Short Term Option Series Program, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire ("Short Term Option Series"). The Exchange is now proposing to amend its rule to permit the listing of options expiring on Wednesdays. Specifically, the Exchange is proposing that it may open for trading on any Tuesday or Wednesday that is a business day, series of options on the SPDR S&P 500 ETF Trust (SPY) to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire ("Wednesday SPY Expirations"). The proposed Wednesday SPY Expiration series will be similar to the current Short Term Option Series, with certain exceptions, as explained in greater detail below. The Exchange notes that having Wednesday expirations is not a novel proposal. Specifically, the Chicago Board Options Exchange, Incorporated ("CBOE") recently received approval to list Wednesday expirations for broad-based indexes.[4] The Commission also recently approved a proposal by the BOX Options Exchange LLC ("BOX") to list Wednesday expirations for SPY Options.[5]

In regards to Wednesday SPY Expirations, the Exchange is proposing to remove the current restriction preventing the Exchange from listing Short Term Option Series that expire in the same week in which monthly option series in the same class expire. Specifically, the Exchange will be allowed to list Wednesday SPY Expirations in the same week in which monthly option series in SPY expire. The current restriction to prohibit the expiration of monthly and Short Term Option Series from expiring on the same trading day is reasonable to avoid investor confusion. This confusion will not apply with Wednesday SPY Expirations and standard monthly options because they will not expire on the same trading day, as standard monthly options do not expire on Wednesdays. Additionally, it would lead to investor confusion if Wednesday SPY Expirations were not listed for one week every month because there was a monthly SPY expiration on the Friday of that week.

Under the proposed Wednesday SPY Expirations, the Exchange may list up to five consecutive Wednesday SPY Expirations at one time. The Exchange may have no more than a total of five Wednesday SPY Expirations listed. This is the same listing procedure as Short Term Option Series that expire on Fridays. The Exchange is also proposing to clarify that the five expiration limit in the current Short Term Option Series Program Rule will not include any Wednesday SPY Expirations. This means, under the proposal, the Exchange would be allowed to list five Short Term Option Series expirations for SPY expiring on Friday under the current rule and five Wednesday SPY Expirations. The interval between strike prices for the proposed Wednesday SPY Expirations will be the same as those for the current Short Term Option Series. Specifically, the Wednesday SPY Expirations will have $0.50 strike intervals.

Currently, for each Short Term Option Expiration Date,[6] the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; NYSE Amex may list these additional series that are listed by other exchanges. The thirty (30) series restriction shall apply to Wednesday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Wednesdays.

As is the case with current Short Term Option Series, the Wednesday SPY Expiration series will be P.M.-settled. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Wednesday SPY Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire almost every Friday, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange seeks to introduce Wednesday SPY Expirations to, among other things, expand hedging tools available to market participants and to continue the reduction of the premium cost of buying protection. The Exchange believes that Wednesday expirations, similar to Friday expirations, would allow market participants to purchase an option based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange is also amending the definition of Short Term Option Series to make clear that it includes Wednesday expirations. Specifically, the Exchange is amending the definition to expand Short Term Option Series to those listed on any Tuesday or Wednesday and that expire on the Wednesday of the next business week. If a Tuesday or Wednesday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday or Wednesday. The Exchange is also revising portions of the definition that have not been updated to reflect changes in the Short Term Options rules. Specifically, the Exchange proposes to rename One Week options as Short Term options so that reference to the product is consistent across Rule 900.2NY(50). The Exchange also proposes to amend Rule 900.2NY(50) to clarify that Short Term Options may be opened and may expire on a Tuesday, Wednesday and Thursday, in addition to Friday which was already a part of the rule. The proposed changes are non-substantive and are intended to add clarity to Exchange rules.

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[4] *See* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (Order Approving SR–CBOE–2015–106).

[5] *See* Securities Exchange Act Release No. 78668 (August 24, 2016), 81 FR 59696 (August 30, 2016) (Order Approving SR–BOX–2016–28).

[6] The Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire ("Short Term Option Expiration Dates"). *See* Rule 903(h).

The Exchange believes that the introduction of Wednesday SPY Expirations will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the industry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday SPY Expirations simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Wednesday SPY Expirations should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor their investment objectives. The Exchange believes that allowing Wednesday SPY Expirations and monthly SPY expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday SPY Expirations in a continuous and uniform manner.

The Exchange believes that the proposed non-substantive changes to Rule 900.2NY(50) would remove impediments to and perfect the mechanism of a free and open market and national market system by providing greater clarity to the rule text regarding the listing and trading of Short Term Options on the Exchange.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Wednesday SPY Expirations in the same way it monitors trading in the current Short Term Option Series. The Exchange also represents that it has the necessary systems capacity to support the new options series.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that having Wednesday expirations is not a novel proposal.[9] The Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner. Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition, as nothing prevents the other options exchanges from proposing similar rules to those that the Exchange is currently proposing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it recently approved BOX's substantially similar proposal to list and trade Wednesday SPY Expirations.[13] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Wednesday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–87. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra*, notes 4 and 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* note 5.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–87 and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21912 Filed 9–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78781; File No. SR–MIAX–2016–30]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

September 7, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify the current list of options for which the Exchange assesses the $0.12 per contract Posted Liquidity Marketing Fee (described below), which applies to options overlying DIA, EEM, FB, GDX, GLD, IWM, QQQ, SLV, SPY, USO, UVXY, and VXX (the "designated symbols"), as listed in the Fee Schedule. The Exchange is also proposing to modify the current list of designated symbols for which the Exchange assesses the $0.50 per contract transaction fee applicable to orders executed for the account of non-MIAX market makers in options overlying the designated symbols, and the discounted $0.48 per contract transaction fee with respect to the designated symbols applicable to any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher, as discussed below. The Exchange proposes to remove some of the current designated symbols from both the Posted Liquidity Marketing Fee and the non-MIAX market maker transaction fees beginning with transactions occurring on or after the proposed September 1, 2016 effective date of this proposed rule change, and to continue to assess the Posted Liquidity Marketing Fee and the non-MIAX market maker transaction fees for the remaining symbols for transactions occurring on or after September 1, 2016 and extending through October 31, 2016.[3]

Posted Liquidity Marketing Fee

Marketing Fees are currently assessed on certain transactions of all MIAX Market Makers.[4] Currently, Section (1)(b) of the Fee Schedule provides that the Exchange will assess a Marketing Fee to all Market Makers for contracts, including mini options, they execute in their assigned classes when the contra-party to the execution is a Priority Customer. MIAX does not assess a Marketing Fee to Market Makers for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, PRIME Participating Quote or Order, or a PRIME AOC Response in the PRIME Auction, unless it executes against an unrelated order.

The Exchange assesses an additional $0.12 per contract Posted Liquidity Marketing Fee to all Market Makers for any standard options overlying the designated symbols that Market Makers execute in their assigned class when the contra-party to the execution is a Priority Customer and the Priority Customer order was posted on the MIAX Book at the time of the execution.[5] The Posted Liquidity Marketing Fee is assessed in addition to the current Marketing Fee of $0.25 per contract for standard options overlying the designated symbols that Market Makers execute in their assigned class when the contra-party to the execution is a Priority Customer.[6]

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that in August 2016, the Exchange expanded the Posted Liquidity Marketing Fee to include 7 additional symbols. *See* File No. SR–MIAX–2016–22 (withdrawn) and Securities Exchange Act Release No. 78681 (August 25, 2016), 81 FR 60077 (August 31, 2016) (SR–MIAX–2016–28). In the present filing, MIAX has removed those seven additional symbols effective September 1, 2016. Further, the Exchange has proposed to remove the five original symbols after October 31, 2016, which will result in no symbols being subject to the additional $0.12 per contract Posted Liquidity Marketing Fee. With this change, the Commission notes that net transaction fees for removing liquidity on MIAX that are assessed on market makers (*i.e.,* the transaction fee together with the marketing fee and Posted Liquidity Marketing Fee) will no longer exceed $0.50 per contract in classes in the Penny Pilot Program.

[4] *See* MIAX Fee Schedule, Section (1)(b), entitled "Marketing Fee" for more detail regarding the Marketing Fee.

[5] For a complete description of the Posted Liquidity Marketing Fee, *see* Securities Exchange Act Release No. 73848 (December 16, 2014), 79 FR 76421 (December 22, 2014) (SR–MIAX–2014–62).

[6] *See id.*

The Exchange is proposing to remove options overlying DIA, FB, GDX, SLV, USO, UVXY, and VXX from the current Posted Liquidity Marketing Fee. For transactions that occur on or after September 1, 2016 and extending through October 31, 2016, MIAX will continue to assess the Posted Liquidity Marketing Fee for transactions in options overlying EEM, GLD, IWM, QQQ, and SPY.

The Exchange is also proposing to remove options overlying DIA, FB, GDX, SLV, USO, UVXY, and VXX from the list of symbols for which the Exchange assesses a $0.50 per contract transaction fee that currently applies to options overlying the designated symbols executed by non-MIAX market makers, as set forth in Section (1)(a)(ii) of the Fee Schedule at footnote 8 [7] The Exchange is proposing to continue to assess the $0.50 per contract non-MIAX market maker transaction fee for transactions in in options overlying EEM, GLD, IWM, QQQ, and SPY that occur on or after September 1, 2016 and extending through October 31, 2016.

Additionally, with respect to contracts executed by non-MIAX market makers, the Exchange proposes to modify the list of symbols for which the Exchange currently assesses transaction fees to any Member or its Affiliate that qualifies for Priority Customer Rebate Program [8] volume tier 3 or higher. Members or Affiliates in Priority Customer Rebate Program volume tier 3 or higher are currently assessed a discounted transaction fee of $0.45 per contract for standard options in all options classes except for options overlying the designated symbols, for which Members and their Affiliates are assessed a $0.48 per contract transaction fee. The Exchange is proposing to remove options overlying DIA, FB, GDX, SLV, USO, UVXY, and VXX from the list of designated symbols for which the Exchange assesses the $0.48 per contract transaction fee. The Exchange is proposing to continue to assess the $0.48 per contract transaction fee to Members or Affiliates in Priority Customer Rebate Program volume tier 3 or higher for transactions in in options overlying EEM, GLD, IWM, QQQ, and SPY that occur on or after September 1, 2016 and extending through October 31, 2016.

The current transaction fee of $0.47 per contract for standard options, discounted to $0.45 per contract for any Member or its Affiliate that qualifies for Priority Customer Rebate Program volume tiers 3 or higher (and $0.045 per contract for mini options) [9] assessed to non-MIAX market makers will apply to options overlying symbols that are deleted from the designated symbols. The proposed rule change is scheduled to become effective September 1, 2016.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [10] in general, and in particular, furthers the objectives of Section 6(b)(4) of the Act,[11] in that it is an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities, and 6(b)(5) of the Act,[12] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed modification of the Posted Liquidity Marketing Fee is fair, equitable, and not unreasonably discriminatory because it will apply equally to all Market Makers that execute against Priority Customer orders in options overlying the current designated symbols that are resting on the Exchange's Book. All similarly situated Market Makers that execute against Priority Customer orders in options overlying the current designated symbols that are resting on the Exchange's Book are subject to the same marketing fees, and access to the Exchange is offered on terms that are not unfairly discriminatory.

Further, the Exchange's proposed modification of the list of symbols for which the Exchange assesses the $0.50 per contract transaction fee for non-MIAX market makers in options overlying the current designated symbols, and the $0.48 per contract transaction fee for Members or Affiliates in Priority Customer Rebate Program volume tier 3 or higher for options overlying the current designated symbols, is reasonable because the fees and the modification of the list of symbols will apply equally to all non-MIAX market makers submitting orders to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it applies equally to all similarly situated MIAX participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[7] *See* Securities Exchange Act Release No. 73850 (December 16, 2014), 79 FR 76424 (December 22, 2014) (SR–MIAX–2014–63) (adopting the Posted Liquidity Marketing Fee and $0.50 per contract non-MIAX market maker transaction fee for certain symbols).

[8] MIAX credits each Member the per contract amount resulting from each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400), provided the Member meets certain percentage thresholds in a month as described in the Priority Customer Rebate Program table. *See* Fee Schedule, Section (1)(a)(iii).

[9] See Fee Schedule Section (1)(a)(ii).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(1) and (b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2016–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–30, and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21913 Filed 9–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, September 15, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 8, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–22035 Filed 9–9–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78779; File No. SR–NYSEARCA–2016–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.1(b)(41) and Rule 6.4

September 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 6, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.1(b)(41) and Rule 6.4. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Rule 6.1(b)(41) and Rule 6.4, so as to allow the listing and trading of options with Wednesday expirations.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Currently, under the Short Term Option Series Program, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire ("Short Term Option Series"). The Exchange is now proposing to amend its rule to permit the listing of options expiring on Wednesdays. Specifically, the Exchange is proposing that it may open for trading on any Tuesday or Wednesday that is a business day, series of options on the SPDR S&P 500 ETF Trust (SPY) to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire ("Wednesday SPY Expirations"). The proposed Wednesday SPY Expiration series will be similar to the current Short Term Option Series, with certain exceptions, as explained in greater detail below. The Exchange notes that having Wednesday expirations is not a novel proposal. Specifically, the Chicago Board Options Exchange, Incorporated ("CBOE") recently received approval to list Wednesday expirations for broad-based indexes.[4] The Commission also recently approved a proposal by the BOX Options Exchange LLC ("BOX") to list Wednesday expirations for SPY Options.[5]

In regards to Wednesday SPY Expirations, the Exchange is proposing to remove the current restriction preventing the Exchange from listing Short Term Option Series that expire in the same week in which monthly option series in the same class expire. Specifically, the Exchange will be allowed to list Wednesday SPY Expirations in the same week in which monthly option series in SPY expire. The current restriction to prohibit the expiration of monthly and Short Term Option Series from expiring on the same trading day is reasonable to avoid investor confusion. This confusion will not apply with Wednesday SPY Expirations and standard monthly options because they will not expire on the same trading day, as standard monthly options do not expire on Wednesdays. Additionally, it would lead to investor confusion if Wednesday SPY Expirations were not listed for one week every month because there was a monthly SPY expiration on the Friday of that week.

Under the proposed Wednesday SPY Expirations, the Exchange may list up to five consecutive Wednesday SPY Expirations at one time. The Exchange may have no more than a total of five Wednesday SPY Expirations listed. This is the same listing procedure as Short Term Option Series that expire on Fridays. The Exchange is also proposing to clarify that the five expiration limit in the current Short Term Option Series Program Rule will not include any Wednesday SPY Expirations. This means, under the proposal, the Exchange would be allowed to list five Short Term Option Series expirations for SPY expiring on Friday under the current rule and five Wednesday SPY Expirations. The interval between strike prices for the proposed Wednesday SPY Expirations will be the same as those for the current Short Term Option Series. Specifically, the Wednesday SPY Expirations will have $0.50 strike intervals.

Currently, for each Short Term Option Expiration Date,[6] the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; NYSE Arca may list these additional series that are listed by other exchanges. The thirty (30) series restriction shall apply to Wednesday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Wednesdays.

As is the case with current Short Term Option Series, the Wednesday SPY Expiration series will be P.M.-settled. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Wednesday SPY Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire almost every Friday, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange seeks to introduce Wednesday SPY Expirations to, among other things, expand hedging tools available to market participants and to continue the reduction of the premium cost of buying protection. The Exchange believes that Wednesday expirations, similar to Friday expirations, would allow market participants to purchase an option based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange is also amending the definition of Short Term Option Series to make clear that it includes Wednesday expirations. Specifically, the Exchange is amending the definition to expand Short Term Option Series to those listed on any Tuesday or Wednesday and that expire on the Wednesday of the next business week. If a Tuesday or Wednesday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday or Wednesday. The Exchange is also revising portions of the definition that have not been updated to reflect changes in the Short Term Options rules. Specifically, the Exchange proposes to rename One Week options as Short Term options so that reference to the product is consistent across Rule 6.1(b)(41). The Exchange also proposes to amend Rule 6.1(b)(41) to clarify that Short Term Options may be opened and may expire on a Tuesday, Wednesday and Thursday, in addition to Friday which was already a part of the rule. The proposed changes are non-substantive and are intended to add clarity to Exchange rules.

The Exchange believes that the introduction of Wednesday SPY Expirations will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the industry.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday SPY Expirations simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Wednesday SPY Expirations should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor their investment objectives. The Exchange believes that allowing Wednesday SPY Expirations and monthly SPY expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday SPY Expirations in a continuous and uniform manner.

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[4] *See* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (Order Approving SR–CBOE–2015–106).

[5] *See* Securities Exchange Act Release No. 78668 (August 24, 2016), 81 FR 59696 (August 30, 2016) (Order Approving SR–BOX–2016–28).

[6] The Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire ("Short Term Option Expiration Dates"). *See* Rule 6.4, Commentary .07.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed non-substantive changes to Rule 6.1(b)(41) would remove impediments to and perfect the mechanism of a free and open market and national market system by providing greater clarity to the rule text regarding the listing and trading of Short Term Options on the Exchange.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in Wednesday SPY Expirations in the same way it monitors trading in the current Short Term Option Series. The Exchange also represents that it has the necessary systems capacity to support the new options series.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that having Wednesday expirations is not a novel proposal.[9] The Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner. Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition, as nothing prevents the other options exchanges from proposing similar rules to those that the Exchange is currently proposing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that it recently approved BOX's substantially similar proposal to list and trade Wednesday SPY Expirations.[13] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Wednesday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–127 and should be submitted on or before October 4, 2016.

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[9] *See supra*, notes 4 and 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* note 5.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21911 Filed 9–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78777; File No. SR–MSRB–2016–12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to MSRB Rules G–15 and G–30 To Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and To Provide Guidance on Prevailing Market Price

September 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2016 the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend MSRB Rule G–15, on confirmation, clearance, settlement and other uniform practice requirements with respect to customer transactions, and MSRB Rule G–30, on prices and commissions, (the "proposed rule change") to require brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose mark-ups and mark-downs to retail customers on certain principal transactions and to provide dealers guidance on prevailing market price for the purpose of calculating mark-ups and mark-downs and other Rule G–30 determinations.

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Amendments to Rule G–15

The MSRB is proposing to amend Rule G–15 to require dealers to provide additional pricing information on customer confirmations in connection with specified municipal securities transactions with retail customers. Specifically, if a dealer trades as principal with a retail (*i.e.,* non-institutional) customer in a municipal security, the dealer must disclose the dealer's mark-up or mark-down (collectively, "mark-up," unless the context requires otherwise) from the prevailing market price for the security on the customer confirmation, if the dealer also executes one or more offsetting principal transaction(s) on the same trading day as the customer, on the same side of the market as the customer, in an aggregate size that meets or exceeds the size of the customer trade.

Many dealers already are required to disclose additional pricing information to customers for certain types of transactions under certain circumstances. Pursuant to Exchange Act Rule 10b–10, dealers effecting equity transactions in which they act in a riskless principal capacity must disclose on the customer confirmation the difference between the price to the customer and the dealer's contemporaneous purchase or sale price.[3] Pursuant to Rule G–15, dealers effecting municipal securities transactions in which they act in an agent capacity must disclose on the customer confirmation the amount of remuneration received from the customer in connection with the transaction (*i.e.,* the commission).

The MSRB has conducted analyses of various data reported to its Electronic Municipal Market Access (EMMA®) system[4] in order to evaluate the potential need for the proposed mark-up disclosure rule. Over the period from July 1, 2015 through September 30, 2015 (Q3 2015),[5] the average daily number of retail-size[6] customer transactions in the secondary market for municipal securities in which the dealer acted in a principal capacity was 15,538. The transactions were mainly concentrated among large firms. These trades were reported by approximately 700 dealers, however, the top 20 dealers with the highest volumes accounted for approximately 73 percent of the transactions in municipal securities. Of those retail-size customer transactions in the secondary market in which the dealer acted in a principal capacity, approximately 55 percent would have likely received a disclosure if the proposed rule had been in place.[7]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* 17 CFR 240.10b–10. Under Rule 10b–10, where a broker or dealer is acting as principal for its own account and is not a market maker in an equity security, and receives a customer order in that equity security that it executes by means of a principal trade to offset the contemporaneous trade with the customer, the rule requires the broker or dealer to disclose the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales). *See* Rule 10b–10(a)(2)(ii)(A). Where the broker or dealer acts as principal for any other transaction in a defined National Market System stock, or an equity security that is listed on a national securities exchange and is subject to last sale reporting, the rule requires the broker or dealer to report the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer. *See* Rule 10b–10(a)(2)(ii)(B).

[4] EMMA is a registered trademark of the MSRB.

[5] Q3 2015 trading activity was substantially similar to trading activity in the preceding two and following one quarter. For example, the total number of trades reported to EMMA in Q3 2015 was 2,319,070 while the average number of trades reported to EMMA per quarter in 2015 was 2,305,705. Similarly, the number of retail-size, customer transactions in the secondary market in which the dealer acted in a principal capacity in Q3 2015 was 994,409 while the average number of trades per quarter with the same characteristics during 2015 was 980,809.

[6] The data reported to the MSRB do not indicate whether the customer purchasing or selling a security has an "institutional" account as defined in Rule G–8(a)(xi). Therefore, for the purposes of the analysis included here, the MSRB has defined a "retail-size" transaction as any customer transaction with a reported trade amount of 100 bonds or fewer or a face value of $100,000 or less. The MSRB recognizes that this proxy for retail customers may, in some cases, include transactions with institutional account holders and may also fail to include transactions with some retail customers.

Of those trades which likely would have received disclosure, 38 percent of the offsetting trade(s) that would have triggered the disclosure occurred simultaneously (the reported times of both the customer trade and the offsetting trade(s) were identical), 50 percent of the offsetting trade(s) occurred within 19 seconds of the customer trade, and 83 percent of the offsetting trades occurred within 30 minutes.

For those trades that likely would have received disclosure, the median value of the estimated mark-up for customer purchases was approximately 1.20 percent and the median value of the estimated mark-down was approximately 0.50 percent.[8] For both mark-ups on customer purchases and mark-downs on customer sales, many customers paid considerably more than the median value. For example, five percent of customer purchases that would have been eligible for disclosure (representing approximately 14,900 trades) had estimated mark-ups higher than 2.25 percent while five percent of customer sales (representing approximately 6,500 trades) had estimated mark-downs higher than 1.51 percent.

The MSRB believes that retail investors are currently limited in their ability to assess and compare transaction costs associated with the purchase or sale of municipal securities. Joint investor testing conducted by the Financial Industry Regulatory Authority ("FINRA") and the MSRB ("joint investor survey") revealed that investors lack a clear understanding of how dealers are compensated when dealers act in a principal capacity and that investors have a desire for more information on this topic. Retail investors transacting with dealers acting in a principal capacity may, therefore, participate in the municipal securities market with less information than other market participants and be less able to foster price competition.[9] This information asymmetry may be observable, in part, in the large differences between estimated median mark-ups and the highest mark-ups paid by retail customers. As noted above, the five percent of customer trades with the highest mark-ups have mark-ups that are more than twice as large as the median mark-up.

Some market participants have asserted that the observed dispersion in mark-ups might be explained by bond- or execution-specific characteristics (*e.g.*, that higher mark-ups can be explained by the additional dealer costs associated with transacting in relatively small quantities). The data do not support this conclusion. An analysis of the transactions that took place during Q3 2015 and that likely would have received disclosures if the proposed rule had been in place indicates that not only are the large dispersions in mark-ups not fully explained by bond- or execution-specific characteristics, but also that, in some cases, factors that might be expected to result in lower mark-ups appear to be associated with higher mark-ups. For example, the median quantity of bonds traded in transactions with the highest mark-ups was either the same or similar to the median quantity of bonds traded in transactions with significantly lower mark-ups and bonds with higher trading frequencies in Q3 2015, and presumably higher liquidity, actually had higher estimated mark-ups than bonds that traded less frequently. The MSRB believes that requiring dealers to disclose their mark-ups on retail customer confirmations would provide meaningful and useful pricing information and may lower transaction costs for retail transactions.

As described in greater detail in the section on comments received on the proposed rule change, the MSRB initially solicited comment on a related proposal in MSRB Notice 2014–20 (the "initial confirmation disclosure proposal"),[10] and subsequently on a revised proposal in MSRB Notice 2015–16 (the "revised confirmation disclosure proposal").[11] The MSRB also has been coordinating with FINRA regarding the development of similar proposals, as appropriate, to foster generally consistent potential disclosures to customers across debt securities and to reduce the operational burdens for firms that trade multiple fixed income securities. The MSRB and FINRA published their initial and revised confirmation disclosure proposals on similar timelines,[12] and FINRA filed with the Commission a substantially similar proposed rule change to the proposed amendments to Rule G–15 on August 12, 2016.[13]

Provided below is a more detailed description of each significant aspect of the proposed amendments to Rule G–15.

Scope of the Disclosure Requirement

The proposed mark-up disclosure requirement would apply where the dealer buys (or sells) a municipal security on a principal basis from (or to) a non-institutional customer and engages in one or more offsetting principal trade(s) on the same trading day in the same security, where the size of the dealer's offsetting principal trade(s), in the aggregate, equals or exceeds the size of the customer trade. A non-institutional customer would be a customer with an account that is not an institutional account, as defined in Rule G–8(a)(xi), (*i.e.*, a retail customer account).[14] The proposed rule change would apply to transactions in municipal securities, other than municipal fund securities.[15]

The MSRB believes that the proposed amendments would provide meaningful pricing information to retail investors, which would most benefit from such disclosure, while not imposing unduly burdensome disclosure requirements on dealers. The MSRB believes that requiring disclosure for retail customers, *i.e.,* those with accounts that are not institutional accounts, would be appropriate because retail customers typically have less ready access to market and pricing information than institutional customers. The MSRB believes that using the definition of an institutional account as set forth in Rule G–8(a)(xi) to define the scope of the disclosure requirement would be appropriate because reliance on an existing standard would simplify implementation and thereby reduce costs associated with the requirement.[16]

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[7] That is, the customer's trade with a dealer was preceded or followed, on the same trading day, by one or more trades equal to the customer trade, by the dealer on the other side of the market in the same security. The percentage of customer trades that would have received a disclosure may be overestimated because in some cases, the dealer trade on the other side of the market may have been with an affiliate and the "look through" provision of the proposed rule may not have identified another trade that would have required disclosure.

[8] The mark-up and mark-down calculations involved matching customer trades to one or more offsetting same-day principal trades by the same dealer in the same CUSIP. This included matching same-size trades as well as trades of different sizes where there was no same-size match (*e.g.*, a dealer purchase of 100 bonds matched to two sales to customers of 50 bonds each). The mark-ups (mark-downs) on customer buys (sells) correspond to the percentage difference in price in customer trades and the offsetting principal trade.

[9] The SEC's 2012 Report on the Municipal Securities Market reached similar conclusions based on multiple studies. *See* U.S. Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012).

[10] *See* MSRB Notice 2014–20 (November 17, 2014).

[11] *See* MSRB Notice 2015–16 (September 24, 2015).

[12] *See* FINRA Regulatory Notice 14–52 (November 2014) and FINRA Regulatory Notice 15–36 (October 2015).

[13] *See* SR–FINRA–2016–032 (Aug. 12, 2016).

[14] Rule G–8(a)(xi) defines an institutional account as the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[15] *See* discussion *infra,* Exceptions for Functionally Separate Trading Desks, List Offering Price Transactions and Municipal Fund Securities.

Same-Day Triggering Timeframe

The MSRB believes that it would be appropriate to require disclosure of the mark-up where the dealer's offsetting principal trade(s) equaled or exceeded the size of the customer trade on the same trading day. To the extent that a dealer will often refer to its contemporaneous cost or proceeds, *e.g.,* the price it paid or received for the bond, in determining the prevailing market price for purposes of calculating the mark-up or mark-down, the MSRB believes that limiting the disclosure requirement to those instances where there is an offsetting trade in the same trading day would generally make determination of the prevailing market price easier.

As is discussed in greater detail below, a number of commenters stated that the window for triggering disclosure should be limited to two hours. Among other things, commenters argued that a two-hour window would be easier to implement, and would more closely capture riskless principal trades, which would align the proposed disclosure to the riskless principal disclosure requirements for equity securities under Exchange Act Rule 10b–10.[17]

The MSRB believes that there are added benefits to requiring disclosure for trades that occur within the same trading day, rather than only trades that occur within two hours. First, the full-day window would ensure that more investors receive mark-up disclosure. Second, the full-day window may make dealers less likely to alter their trading patterns in response to the proposed requirement, as dealers would need to hold positions overnight to avoid the proposed disclosure.[18]

Some commenters recommended that the proposed disclosure obligation be limited to riskless principal transactions involving retail investors, which, in their view, would more accurately reflect dealer compensation and transaction costs and be more consistent with the stated objectives of the SEC in this area. These commenters would apply the requirement to riskless principal transactions as previously defined in the equity context by the Commission, where the dealer has an ''order in hand'' at the time of execution. However, the MSRB believes that it may be difficult to objectively define, implement and monitor a riskless principal trigger standard for municipal securities. The MSRB also believes that customers would benefit from the disclosure irrespective of whether the dealer's capacity on the transaction was riskless principal and believes, at this juncture, that using the riskless principal standard ultimately would be too narrow.

Non-Arms-Length Affiliate Transactions

With respect to the offsetting principal trade(s), where a dealer buys from, or sells to, certain affiliates, the proposal would require the dealer to ''look through'' the dealer's transaction with the affiliate to the affiliate's transaction(s) with third parties in determining when the security was acquired and whether the ''same trading day'' requirement has been triggered. Specifically, the MSRB proposes to require dealers to apply the ''look through'' where a dealer's transaction with its affiliate was not at arms-length. For purposes of the proposed rule change, an ''arms-length transaction'' would be considered a transaction that was conducted through a competitive process in which non-affiliate dealers could also participate—*e.g.,* pricing sought from multiple dealers, or the posting of multiple bids and offers—and where the affiliate relationship did not influence the price paid or proceeds received by the dealer. As a general matter, the MSRB would expect that the competitive process used in an ''arms-length'' transaction, *e.g.,* the request for pricing or platform for posting bids and offers, is one in which non-affiliates have frequently participated. The MSRB believes that, for example, sourcing liquidity through a non-arms-length transaction with an affiliate is functionally equivalent to selling out of a dealer's own inventory for purposes of the proposed disclosure trigger. The MSRB therefore believes it would be appropriate in those circumstances to require a dealer to ''look through'' its transaction in a security with its affiliate to the affiliate's transactions in the security with third parties to determine whether the proposed mark-up disclosure requirement applies in these circumstances.[19]

Exceptions for Functionally Separate Trading Desks, List Offering Price Transactions and Municipal Fund Securities

Functionally Separate Trading Desks. The proposed amendments contain a number of exceptions from the mark-up disclosure requirement. First, if the offsetting same-day dealer principal trade was executed by a trading desk that is functionally separate from the dealer's trading desk that executed the transaction with the customer, the principal trade by that separate trading desk would not trigger the disclosure requirement. Dealers must have in place policies and procedures reasonably designed to ensure that the functionally separate principal trading desk through which the dealer purchase or dealer sale was executed had no knowledge of the customer transaction. The MSRB believes that this exception is appropriate because it recognizes the operational cost and complexity that may result from using a dealer principal trade executed by a separate, unrelated trading desk as the basis for determining whether a mark-up disclosure is triggered on the customer confirmation. For example, the exception would allow an institutional desk within a dealer to service an institutional customer without triggering the disclosure requirement for an unrelated trade performed by a separate retail desk within the dealer. At the same time, in requiring that the dealer have policies and procedures in place that are reasonably designed to ensure that the other trading desk had no knowledge of the customer transaction,[20] the MSRB believes that the safeguards surrounding the exception are sufficiently rigorous to minimize concerns about the potential misuse of the exception. In other words, in the example above, the dealer could not use the functionally separate trading desk exception to avoid the proposed disclosure requirement if trades at the institutional desk were used to source securities for transactions at the retail desk.

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[16] As discussed in greater detail below, the MSRB initially proposed that the disclosure requirement would apply to customer trades involving 100 bonds or fewer or bonds in a par amount of $100,000 or less. In response to comments that the proposed size-based standard could either exclude retail customer transactions above that amount from the proposed disclosure, or subject institutional transactions below that amount to the proposed disclosure, the MSRB revised the proposal to incorporate the Rule G–8(a)(xi) definition of an institutional account.

[17] *See* 17 CFR 240.10b–10.

[18] It is important to note that, under Rule G–18, on best execution, dealers must use reasonable diligence to ascertain the best market for the security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Rule G–18, Supplementary Material .03 emphasizes that a dealer must make every effort to execute a customer transaction promptly, taking into account prevailing market conditions. Any intentional delay of a customer execution to avoid the proposed disclosure requirement or otherwise would be contrary to these duties to customers. A dealer that purposefully delayed the execution of a customer order to avoid the proposed disclosure also may be in violation of the MSRB's fundamental fair-dealing rule, Rule G–17, on conduct of municipal securities and municipal advisory activities.

[19] Similarly, as explained in greater detail, *infra,* in the discussion of the proposed prevailing market price guidance, in the case of a non-arms-length transaction with an affiliate, the dealer also would be required to ''look through'' to the affiliate's transaction(s) with third parties in the security and the time of trade and related cost or proceeds of the affiliate in determining the dealer's calculation of the mark-up pursuant to Rule G–30.

The MSRB also believes that this exception is appropriate and consistent with the concept of functional and legal separation that exists in connection with other regulatory requirements, such as SEC Regulation SHO, and notes that some dealers may already have experience maintaining functionally separate trading desks to comply with these requirements, depending upon their particular mix of business.

List Offering Price Transactions. Second, the mark-up would not be required to be disclosed if the customer transaction is a list offering price transaction, as defined in paragraph (d)(vii)(A) of Rule G–14 RTRS Procedures.[21] For such transactions, bonds are sold at the same published list offering price to all investors, and the compensation paid to the dealer, such as the underwriting fee, is paid for by the issuer and typically is described in the official statement.[22] Given the availability of information in connection with such transactions, the MSRB believes that the proposed mark-up disclosure would not be warranted for list offering price transactions.

Municipal Fund Securities. Lastly, disclosure of mark-ups would not be required for transactions in municipal fund securities. Because dealer compensation for municipal fund securities transactions is typically not in the form of a mark-up, the MSRB believes that the proposed mark-up disclosure would not have application for transactions in municipal fund securities. Additionally, the proposed requirement to disclose the time of execution and a reference and hyperlink to the Security Details page for the customer's security on EMMA (both discussed below) also would not be established for transactions in such securities.

Proposed Information To Be Disclosed on the Customer Confirmation

If the transaction meets the criteria described above, the dealer would be required to disclose on the customer confirmation the dealer's mark-up from the prevailing market price for the security. The mark-up would be required to be calculated in compliance with Rule G–30 and the supplementary material thereunder, including proposed Supplementary Material .06 (discussed below), and expressed as a total dollar amount and as a percentage of the prevailing market price of the municipal security.[23] The MSRB believes that it would be appropriate to require dealers to calculate the mark-up in compliance with Rule G–30, as new Supplementary Material .06 would provide extensive guidance on how to calculate the mark-up for transactions in municipal securities, including transactions for which disclosure would be required under the proposed rule change, and incorporates a presumption that prevailing market price is established by reference to contemporaneous cost or proceeds. While some commenters noted the operational cost and complexity of implementing a mark-up disclosure requirement, the MSRB notes that dealers are currently subject to Rule G–30, on prices and commissions, and already are required to evaluate the mark-ups that they charge to ensure that they are fair and reasonable.[24]

The MSRB recognizes that the determination of the prevailing market price of a particular security may not be identical across dealers.[25] Existing Rule G–30, however, requires dealers to exercise reasonable diligence in establishing the prevailing market price.[26] The MSRB, therefore, would expect that dealers have reasonable policies and procedures in place to establish the prevailing market price and that such policies and procedures are applied consistently across customers.

The MSRB understands that some dealers provide confirmations on an intra-day basis. As explained in detail below in the context of the proposed amendments to Rule G–30, the proposed requirement to disclose a mark-up calculated "in compliance with" Rule G–30 (including the proposed prevailing market price guidance) need not delay the confirmation process. A dealer may determine, as a final matter for disclosure purposes, the prevailing market price based on the information the dealer has, based on the use of reasonable diligence as required by proposed amended Rule G–30, at the time of the dealer's generation of the disclosure.

The proposed rule change also would require the dealer to provide a reference and hyperlink to the Security Details page for a customer's security on EMMA, along with a brief description of the type of information available on that page. This disclosure requirement would be limited to transactions with retail (*i.e.*, non-institutional) customers, but would apply for all such transactions regardless of whether a mark-up disclosure is required for the transaction.[27] The MSRB believes that such a link would provide retail investors with a broad picture of the market for a security on a given day and believes that requiring a link to EMMA would increase investors' awareness of, and ability to access, this information. Additionally, results from the joint investor survey support the value to investors of a security-specific link to EMMA, rather than a link to the EMMA homepage.[28] The MSRB believes that a link to EMMA or such other enhancements would not be sufficient, as customers are not always able to identify with certainty a principal trade in the same security that was made by that customer's dealer. As a result, the customer would not always be able to ascertain the exact amount of the price differential between the dealer and customer trade or to determine whether such a trade accurately reflects the "prevailing market price" for purposes of calculating the dealer's compensation.

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[20] This provision is distinguished from the "look through" provision noted above, whereby the customer transaction is being sourced through a non-arms-length transaction with the affiliate. Under the separate trading desk exception, functionally separate trading desks are required to have policies and procedures in place that are reasonably designed to ensure that trades occurring on the functionally separate trading desks are executed with no knowledge of each other and reflect unrelated trading decisions. Additionally, the MSRB notes that this exception would only apply to determine whether or not the proposed disclosure requirement has been triggered; it does not change the dealer's requirements relating to the calculation of its mark-up or mark-down under Rule G–30.

[21] The term "list offering price transaction" is defined as a primary market sale transaction executed on the first day of trading of a new issue "by a sole underwriter, syndicate manager, syndicate member, selling group member, or distribution participant [to a customer] at the published list offering price for the security." Rule G–14 RTRS Procedures (d)(vii)(A).

[22] Under Rule G–32, on disclosures in connection with primary offerings, a dealer selling offered municipal securities generally must deliver to its customers a copy of the official statement by no later than the settlement of the transaction. Under Rule G–32(a)(iii), any dealer that satisfies the official statement delivery obligation by making certain submissions to EMMA in compliance with Rule G–32(a)(ii) must also provide to the customer, in connection with offered municipal securities sold by the issuer on a negotiated basis to the extent not included in the official statement, among other things, certain specified information about the underwriting arrangements, including the underwriting spread.

[23] Some commenters stated that the mark-up should be expressed as a total dollar amount, while others suggested that disclosure as a total dollar amount should not be required. Others still stated that the mark-up should be required to be disclosed as both a percentage and a total dollar amount. While commenters did not uniformly favor any particular format of disclosure, results of the joint investor survey indicated that investors found that disclosing the mark-up or mark-down both as a dollar amount and as a percentage of the prevailing market price would be more useful than only disclosing it in one of those forms.

[24] Rule G–30, Supplementary Material .01(d).

[25] For example, because the prevailing market price of a security is presumptively established by reference to the dealer's contemporaneous cost or proceeds, different dealers may arrive at different prevailing market prices for the same security depending on the price at which they contemporaneously acquired or sold such security. However, even where dealers may reasonably arrive at different prevailing market prices for the same security, the MSRB believes that the difference between such prevailing market price determinations would typically be small.

[26] Rule G–30, Supplementary Material .04(b).

The proposed rule change also would require the dealer to disclose on all customer confirmations, other than those for transactions in municipal fund securities, the time of execution. Dealers are already under an obligation to either disclose such information on the customer confirmation or to include a statement that the time of execution will be furnished upon written request.[29] The proposed amendments to Rule G–15 would essentially delete the option to provide this information upon request. The MSRB believes that the provision of a security-specific link to EMMA on retail customer confirmations, together with the time of execution would provide retail customers a comprehensive view of the market for their security, including the market as of the time of their trade. This combined disclosure also would reduce the risk that a customer may overly focus on dealer compensation and not appropriately consider other factors relevant to the investment decision. Even in instances in which the mark-up would not be required to be disclosed to customers, the MSRB believes that the inclusion of the time of execution on all customer confirmations (retail and institutional) would increase market transparency at relatively low cost. Results from the joint investor survey support the MSRB's view that time of execution disclosure is valued by investors.

As noted above, if the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

Proposed Amendments to Rule G–30

The MSRB is proposing to add new supplementary material (paragraph .06 entitled "Mark-Up Policy") and amend existing supplementary material under MSRB Rule G–30, on prices and commissions, to provide guidance on establishing the prevailing market price and calculating mark-ups and mark-downs for principal transactions in municipal securities (the "proposed guidance" or "proposed prevailing market price guidance"). The MSRB believes additional guidance on these subjects would promote consistent compliance by dealers with their existing fair-pricing obligations under MSRB rules, in a manner that would be generally harmonized with the approach taken in other fixed income markets. The MSRB also believes that such guidance would support effective compliance with the proposed amendments to Rule G–15, discussed above. In addition, commenters indicated that compliance with the proposed amendments to MSRB Rule G–15 would be less burdensome if the MSRB were to provide guidance on establishing the prevailing market price. Significantly, municipal securities dealers that also transact in corporate or agency debt securities must comply with FINRA Rule 2121, including Supplementary Material .02 ("FINRA guidance") for transactions in those securities.[30]

The proposed rule change also includes amendments to the Supplementary Material to Rule G–30. For example, the MSRB proposes to clarify in Supplementary Material .01(a) that a dealer must exercise "reasonable" diligence in establishing the market value of a security and the reasonableness of the compensation received. This requirement is consistent with existing Supplementary Material .04(b) ("[D]ealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances") and clarifies that the same standard applies under the Supplementary Material .01(a). Similarly, the proposed amendments to Supplementary Material .01(d) to Rule G–30 will clarify the relationship between that provision and the new proposed Supplementary Material .06 containing the proposed prevailing market price guidance. In addition, this provision will assist in understanding of the overall rule.

When a dealer acts in a principal capacity and sells a municipal security to a customer, the dealer generally "marks up" the security, increasing the total price the customer pays. Conversely, when buying a security from a customer, a dealer that is acting as a principal generally "marks down" the security, reducing the total proceeds the customer receives. Rule G–30(a) prohibits a dealer from engaging in a principal transaction with customers except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable. The Supplementary Material to Rule G–30, among other things, provides that as part of the aggregate price to the customer, the mark-up or mark-down also must be a fair and reasonable amount, taking into account all relevant factors.[31]

A critical step in determining whether the mark-up or mark-down on a principal transaction with a customer and the aggregate price to such customer is fair and reasonable is correctly identifying the prevailing market price of the security. Currently, under Rule G–30, the total transaction price to the customer must bear a reasonable relationship to the prevailing market price of the security, and, in a principal transaction, the dealer's compensation must be computed from the inter-dealer market price prevailing at the time of the customer transaction.[32] Moreover, existing Rule G–30 requires dealers to exercise diligence in establishing the market value of the security and the reasonableness of their compensation.[33]

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[27] Because institutional customers typically have more ready access to the type of information available on EMMA, the MSRB is not proposing to require this disclosure for transactions with institutional customers. Of course, dealers are free to voluntarily provide such a disclosure on all customer confirmations, including those for institutional customers.

[28] Some commenters stated that EMMA already contains sufficient pricing information for municipal securities, such as the last trade price for a security, and recommended that the MSRB focus solely on enhancing access to EMMA instead of requiring additional pricing disclosure.

[29] Dealers have an existing obligation to report "time of trade" to the Real-Time Transaction Reporting System pursuant to Rule G–14, on reports of sales or purchases. In addition, dealers have an existing obligation to make and keep records of the time of execution of principal transactions under Rule G–8(a)(vii). The time of execution for proposed confirmation disclosure purposes is the same as the time of trade for Rule G–14 reporting purposes and the time of execution for purposes of Rule G–8(a)(vii), except that dealers should omit all seconds from the disclosure because the trade data displayed on EMMA does not include seconds (*e.g.*, dealers should disclose a time of trade of 10:00:59 as 10:00).

[30] *See* FINRA Rule 2121, Fair Prices and Commissions, Supplementary Material .02, Additional Mark-Up Policy For Transactions in Debt Securities, Except Municipal Securities.

[31] Rule G–30, Supplementary Material .01(d).

[32] Rule G–30, Supplementary Material .01(c), (d).

Under the proposed guidance, the prevailing market price of a municipal security generally would be presumptively established by referring to the dealer's contemporaneous cost as incurred, or contemporaneous proceeds as obtained. This presumption could be overcome in limited circumstances. If the presumption is overcome, or if it is not applicable because the dealer's cost is (or proceeds are) not contemporaneous, various factors discussed below would be either required or permitted to be considered, in successive order, to determine the prevailing market price. Generally, a subsequent factor or series of factors could be considered only if previous factors in the hierarchy, or "waterfall," are inapplicable.

As described in greater detail below, the MSRB solicited comment on draft prevailing market price guidance in MSRB Notice 2016–07 (the "draft guidance"). The draft guidance was substantially similar to and generally harmonized with the FINRA guidance for non-municipal fixed income securities. As discussed below, the proposed guidance is substantially in the form of the draft guidance on which public comment was sought, with some minor changes. In addition, the MSRB provides additional explanation of the proposed guidance herein in response to commenters and to clearly express the MSRB's intended meaning of the proposed guidance. Moreover, the MSRB will continue to engage with FINRA with the goal of promoting generally harmonized interpretations of the proposed guidance, if approved, and the FINRA guidance, as applicable and to the extent appropriate in light of the differences between the markets.

Provided below is a more detailed description of each significant aspect of the proposed amendments to Rule G–30.

Rebuttable Presumption Based on Contemporaneous Costs or Proceeds

The proposed guidance builds on the standard in existing Supplementary Material to Rule G–30 that the prevailing market price of a security is generally the price at which dealers trade with one another (*i.e.,* the inter-dealer price).[34] The proposed guidance provides that the best measure of prevailing market price is presumptively established by referring to the dealer's contemporaneous cost (proceeds), as consistent with other MSRB pricing rules, such as the best-execution rule (Rule G–18). Under the proposed guidance, a dealer's cost is (or proceeds are) considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the municipal security. The reference to dealer contemporaneous cost or proceeds in determining the prevailing market price reflects a recognition of the principle that the prices paid or received for a security by a dealer in actual transactions closely related in time are normally a highly reliable indication of the prevailing market price and that the burden is appropriately on the dealer to establish the contrary.

A dealer may look to other evidence of the prevailing market price (other than contemporaneous cost) only where the dealer, when selling the security, made no contemporaneous purchases in the municipal security or can show that in the particular circumstances the dealer's contemporaneous cost is not indicative of the prevailing market price. When buying a municipal security from a customer, the dealer may look to other evidence of the prevailing market price (other than contemporaneous proceeds) only where the dealer made no contemporaneous sales in the municipal security or can show that in the particular circumstances the dealer's contemporaneous proceeds are not indicative of the prevailing market price.

A dealer may be able to show that its contemporaneous cost (when it is making a sale to a customer) or proceeds (when it is making a purchase from a customer) are not indicative of the prevailing market price, and thus overcome the presumption, in instances where: (i) Interest rates changed to a degree that such change would reasonably cause a change in municipal securities pricing; (ii) the credit quality of the municipal security changed significantly; 1A[35] or (iii) news was issued or otherwise distributed and known to the marketplace that had an effect on the perceived value of the municipal security.[36]

Hierarchy of Pricing Factors. Under the proposed guidance, if the dealer has established that the dealer's cost is (or proceeds are) not contemporaneous or if the dealer has overcome the presumption that its contemporaneous cost or amount of proceeds provides the best measure of the prevailing market price, the dealer must consider, in the order listed (subject to Supplementary Material .06(a)(viii), on isolated transactions and quotations), a hierarchy of three additional types of pricing information, referred to here as the hierarchy of pricing factors: (i) Prices of any contemporaneous inter-dealer transactions in the municipal security; (ii) prices of contemporaneous dealer purchases (or sales) in the municipal security from (or to) institutional accounts with which any dealer regularly effects transactions in the same municipal security; or (iii) if an actively traded security, contemporaneous bid (or offer) quotations for the municipal security made through an inter-dealer mechanism, through which transactions generally occur at the displayed quotations. Pricing information of a succeeding type may only be considered where the prior type does not generate relevant pricing information. In reviewing the available pricing information of each type, the relative weight of the information depends on the facts and circumstances of the comparison transaction or quotation. The proposed guidance also makes clear the expectation that, because of the lack of active trading in many municipal securities, these factors may frequently not be available in the municipal market. Accordingly, dealers may often need to consult factors further down the waterfall, such as "similar" securities and economic models, to identify sufficient relevant and probative pricing information to establish the prevailing market price of a municipal security.

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[33] Rule G–30, Supplementary Material .01(a).

[34] *See* Rule G–30, Supplementary Material .01(d) ("Dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction.").

[35] Consistent with FINRA statements with respect to other fixed income securities, although an announcement by a nationally recognized statistical rating organization ("NRSRO") that it has reviewed the issuer's credit and has changed the issuer's credit rating is an easily identifiable incidence of a change of credit quality, the category is not limited to such announcements. It may be possible for a dealer to establish that the issuer's credit quality changed in the absence of such an announcement; conversely, a relevant regulator may determine that the issuer's credit quality had changed and such change was known to the market and factored into the price of the municipal security before the dealer's transaction (the transaction used to measure the dealer's contemporaneous cost) occurred. *See* Exchange Act Release No. 54799 (Nov. 21, 2006); 71 FR 68856 (Nov. 28, 2006) (FINRA Notice of Filing of Amendments Related to Mark-Up Policy).

[36] Consistent with FINRA statements with respect to other fixed income securities, certain news affecting an issuer, such as news of legislation, may affect either a particular issuer or a group or sector of issuers and may not clearly fit within the two previously identified categories—interest rate changes and credit quality changes. Such news may cause price shifts in a municipal security, and could, depending on the facts and circumstances, invalidate the use of the dealer's own contemporaneous cost as a reliable and accurate measure of prevailing market price. *See id.*

Similar Securities. If the above factors are not available, the proposed guidance provides that the dealer may take into consideration a non-exclusive list of factors that are generally analogous to those set forth under the hierarchy of pricing factors, but applied here to prices and yields of specifically defined "similar" securities. However, unlike the factors set forth in the hierarchy of pricing factors, which must be considered in the specified order, the factors related to similar securities are not required to be considered in a particular order or particular combination. The non-exclusive factors specifically listed are:

- Prices, or yields calculated from prices, of contemporaneous inter-dealer transactions in a specifically defined "similar" municipal security;
- Prices, or yields calculated from prices, of contemporaneous dealer purchase (sale) transactions in a "similar" municipal security with institutional accounts with which any dealer regularly effects transactions in the "similar" municipal security with respect to customer mark-ups (mark-downs); and
- Yields calculated from validated contemporaneous inter-dealer bid (offer) quotations in "similar" municipal securities for customer mark-ups (mark-downs").

When applying one or more of the factors, a dealer would be required to consider that the ultimate evidentiary issue is whether the prevailing market price of the municipal security will be correctly identified. As stated in the proposed guidance, the relative weight of the pricing information obtained from the factors depends on the facts and circumstances surrounding the comparison transaction, such as whether the dealer in the comparison transaction was on the same side of the market as the dealer in the subject transaction, the timeliness of the information and, with respect to the final bulleted factor above, the relative spread of the quotations in the "similar" municipal security to the quotations in the subject security. As noted below, regarding isolated transactions generally, in considering yields of "similar" securities, except in extraordinary circumstances, dealers may not rely exclusively on isolated transactions or a limited number of transactions that are not fairly representative of the yields of transactions in "similar" municipal securities taken as a whole.

The proposed guidance provides that a "similar" municipal security should be sufficiently similar to the subject security that it would serve as a reasonable alternative investment to the investor. At a minimum, the municipal security or securities should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yields of the "similar" security or securities. Where a municipal security has several components, appropriate consideration may also be given to the prices or yields of the various components of the security. The proposed guidance also sets forth a number of non-exclusive factors that may be used in determining the degree to which a security is "similar." These include: (i) Credit quality considerations;[37] (ii) the extent to which the spread at which the "similar" municipal security trades is comparable to the spread at which the subject security trades; (iii) general structural characteristics and provisions of the issue;[38] (iv) technical factors such as the size of the issue, the float and recent turnover of the issue, and legal restrictions on transferability as compared with the subject security; and (v) the extent to which the federal and/or state tax treatment of the "similar" municipal security is comparable to such tax treatment of the subject security.

Because of the unique characteristics of the municipal securities market, including the large number of vastly different issuers and the highly diverse nature of most outstanding securities, the MSRB expects that, in order for a security to qualify as sufficiently "similar" to the subject security, such security will be at least highly similar to the subject security with respect to nearly all of the listed "similar" security factors that are relevant to the subject security at issue. The MSRB believes that this recognition of a practical aspect of the municipal securities market supports a more rational comparison of a municipal security to only those that are likely to produce relevant and probative pricing information in determining the prevailing market price of the subject security. Pricing information, for example, for a taxable security will not be useful in evaluating a tax-exempt security without making some price adjustment for that difference, which would constitute a form of economic modeling that is not permitted except at the next level of the waterfall analysis. The same is true, just as additional examples, of a bond versus another with a different credit rating, a general obligation bond versus a revenue bond, a bond with bond insurance versus one without, a bond with a sinking fund versus one without, and a bond with a call provision versus one without. As a result of these practical aspects, and due also in part to the lack of active trading in many municipal securities, dealers in the municipal securities market likely may not often find pricing information from sufficiently similar securities and may frequently need to then consider economic models at the next level of the waterfall analysis.

When a security's value and pricing is based substantially on, and is highly dependent on, the particular circumstances of the issuer, including creditworthiness and the ability and willingness of the issuer to meet the specific obligations of the security (often referred to as "story bonds"), in most cases other securities would not be sufficiently similar, and therefore, other securities may not be used to establish the prevailing market price.

Economic Models. If information concerning the prevailing market price of a security cannot be obtained by applying any of the factors at the higher levels of the waterfall, dealers may consider as a factor in assessing the prevailing market price of a security the prices or yields derived from economic models. Such economic models may take into account measures such as reported trade prices, credit quality, interest rates, industry sector, time to maturity, call provisions and any other embedded options, coupon rate, and face value, and may consider all applicable pricing terms and conventions used.[39]

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[37] Credit quality considerations include, but are not limited to, whether the municipal security is issued by the same or similar entity, bears the same or similar credit rating, or is supported by a similarly strong guarantee or collateral as the subject security (to the extent securities of other issuers are designated as "similar" securities, significant recent information concerning either the "similar" security's issuer or subject security's issuer that is not yet incorporated in credit ratings should be considered (*e.g.,* changes to ratings outlooks)).

[38] General structural characteristics and provisions of the issue include, but are not limited to, coupon, maturity, duration, complexity or uniqueness of the structure, callability, the likelihood that the municipal security will be called, tendered or exchanged, and other embedded options, as compared with the characteristics of the subject security.

[39] Consistent with FINRA's commentary with respect to other fixed income securities, when a dealer seeks to identify prevailing market price using other than the dealer's contemporaneous cost or contemporaneous proceeds, the dealer must be prepared to provide evidence that would establish the dealer's basis for not using contemporaneous cost (proceeds), and information about the other values reviewed (*e.g.,* the specific prices and/or yields of securities that were identified as similar securities) in order to determine the prevailing

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Isolated Transactions and Quotations. The ultimate issue the proposed guidance is intended to address is the prevailing market price of the security; therefore, isolated transactions or isolated quotations generally would have little or no weight or relevance in establishing the prevailing market price. Due to the unique nature of the municipal securities market, including the large number of issuers and outstanding securities and the infrequent trading of many securities in the secondary market, the proposed guidance recognizes that isolated transactions and quotations may be more prevalent in the municipal securities market than other fixed income markets and explicitly recognizes that an off-market transaction may qualify as an "isolated transaction" under the proposed guidance.

The proposed guidance also addresses the application of the "isolated" transactions and quotations provision. The proposed guidance explains that, for example, in considering the factors in the hierarchy of pricing factors, a dealer may give little or no weight to pricing information derived from an isolated transaction or quotation. The proposed guidance also provides that, in considering yields of "similar" securities, except in extraordinary circumstances, dealers may not rely exclusively on isolated transactions or a limited number of transactions that are not fairly representative of the yields of transactions in "similar" municipal securities taken as a whole.

Contemporaneous Customer Transactions

Because the proposed guidance ultimately seeks to identify the prevailing inter-dealer market price, a dealer's contemporaneous cost (for customer sales) or proceeds (for customer purchases) in an *inter-dealer* transaction is presumptively the prevailing market price of the security. Where the dealer has no contemporaneous cost or proceeds, as applicable, from an inter-dealer transaction, the dealer must then consider whether it has contemporaneous cost or proceeds, as applicable, from a *customer* transaction. In establishing the presumptive prevailing market price, in such instances, the dealer should refer to such contemporaneous cost or proceeds and make an adjustment for any mark-up or mark-down charged in that customer transaction. This methodology for establishing the presumptive prevailing market price is appropriate because, as explained in the relevant case law, it reflects the fact that the price at which a dealer, for example, purchases securities from customers generally is less than the amount that the dealer would have paid for the security in the inter-dealer market. To identify the prevailing market price for the purpose of calculating the mark-up or mark-down in the contemporaneous customer transaction, the dealer should proceed down the waterfall, according to its terms, identifying the most relevant and probative evidence of the prevailing inter-dealer market price.

This approach is supported by the relevant case law, in which the prevailing market price has been established by reference to a customer price by adjusting the customer price based on an "imputed" mark-up or mark-down.[40] This approach is also consistent with the text of the proposed guidance because the presumptive prevailing market price is, through this methodology, established "by referring to" the dealer's contemporaneous cost or proceeds, as required by proposed Supplementary Material .06(a)(i).[41]

Moreover, this approach is consistent with the fundamental principle underlying the proposed guidance, because it results in a reasonable proxy for what the dealer's contemporaneous cost or proceeds would have been in an inter-dealer transaction. Indeed, because this adjustment methodology occurs at the first step of the waterfall analysis (proposed Supplementary Material .06(a)(i)), the resulting price from this methodology is presumed to be the prevailing market price for any contemporaneous transactions with the same strength of the presumption that applies to prices from inter-dealer transactions.

This interpretation of the proposed prevailing market price guidance takes on special significance in the context of a mark-up disclosure requirement, such as contained in the proposed amendments to Rule G–15. Where, for example, a dealer purchases a security from one retail customer and contemporaneously sells it to another retail customer, with no relevant market changes in the interim, the total difference between the two prices may be attributed to dealer compensation, but each customer pays only a portion of this difference (as either a mark-up or a mark-down). Without adjustments to the contemporaneous cost and proceeds based on the mark-down and mark-up, respectively, the confirmation disclosures to both customers would reflect "double counting." By contrast, under the adjustment approach, where there are no relevant market changes in the interim that would rebut the presumption, there is a complete apportionment of the total difference in price (*i.e.,* no double counting and no part of the total difference in price left undisclosed to either customer).

Non-Arms-Length Affiliate Transactions. The ultimate issue the proposed guidance is intended to address is the prevailing market price of the security, using the most relevant and probative evidence of the market price in the inter-dealer market. Therefore, as noted in the discussion above of the mark-up disclosure requirement, a non-arms-length transaction in a security (as defined in that context) with an affiliate should not be used to identify a dealer's contemporaneous cost or proceeds and presumptively the prevailing market

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market price of the subject security. If a dealer relies upon pricing information from a model the dealer uses or has developed, the dealer must be able to provide information that was used on the day of the transaction to develop the pricing information (*i.e.,* the data that was input and the data that the model generated and the dealer used to arrive at prevailing market price). *See supra* n. 35, FINRA Notice of Filing of Amendments Related to Mark-Up Policy.

[40] In a number of instances, where a dealer lacked contemporaneous inter-dealer transactions, the prevailing market price in connection with a sale to a customer was calculated by identifying contemporaneous cost from a transaction with another customer and then making an upward adjustment. The adjustment, referred to in the cases as an "imputed markdown," was then added to the dealer's purchase price from the customer to establish pricing at the level at which an inter-dealer trade might have occurred. Similarly, in determining the prevailing market price of a municipal security in connection with a purchase from a customer, the prevailing market price was determined by identifying the dealer's contemporaneous proceeds in a transaction with another customer, and then making a downward adjustment by deducting an "imputed mark-up" from such contemporaneous proceeds.

[41] For example, assume that Dealer A sells municipal security X to Dealer B at a price of 98.5. Then, assume that Dealer C purchases municipal security X from a customer at a price of 98 and contemporaneously sells the security to a customer at a price of 100. Because Dealer C itself has no other contemporaneous transactions in the security, it would proceed down the waterfall to the hierarchy of pricing factors, discussed *supra.* A dealer at that level of the waterfall analysis must first consider prices of any contemporaneous inter-dealer transaction in establishing the prevailing market price. Accordingly, Dealer C would consider the contemporaneous inter-dealer transaction between Dealer A and Dealer B at 98.5 in determining the amount of the mark-down, and deduct its contemporaneous cost of 98 from 98.5 to arrive at a mark-down of 0.5. Then, Dealer C would add the amount of the mark-down to the dealer's contemporaneous cost for a presumptive prevailing market price (or adjusted contemporaneous cost) of 98.5. In the absence of evidence to rebut the presumption, when disclosing the mark-up to the customer to whom Dealer C sold municipal security X, Dealer C would then disclose the difference between Dealer C's adjusted contemporaneous cost (98.5) and the price paid by the customer to whom Dealer C sold municipal security X (100) for a mark-up of 1.5 (1.02% of the prevailing market price).

price of the security. The MSRB believes that, for example, sourcing liquidity through a non-arms-length transaction with an affiliate is functionally equivalent to selling out of a dealer's own inventory for purposes of the calculation of the mark-up. The MSRB therefore believes it would be appropriate in those circumstances to require a dealer to "look through" its transaction in a security with its affiliate to the affiliate's transaction(s) in the security with third parties and the related time of trade and cost or proceeds of the affiliate in determining the dealer's calculation of the mark-up pursuant to Rule G–30. This is the case not only for transactions for which mark-up disclosure would be required under the proposed amendments to Rule G–15, but for the application of proposed amended Rule G–30 generally, including the proposed prevailing market price guidance, for purposes of evaluating the fairness and reasonableness of mark-ups and mark-downs.[42]

Compliance at the Time of Generation of Disclosure. As noted, the MSRB understands that some dealers provide confirmations on an intra-day basis. The requirement under the proposed amendments to Rule G–15 to disclose a mark-up or mark-down calculated "in compliance with" Rule G–30 (including the proposed prevailing market price guidance) need not delay the confirmation process. A dealer may determine, as a final matter for disclosure purposes, the prevailing market price based on the information the dealer has, based on the use of reasonable diligence as required by proposed amended Rule G–30, at the time the dealer inputs the information into its systems to generate the mark-up disclosure.[43] Such timing of the determination of prevailing market price would avoid potentially open-ended delays that could otherwise result if dealers were required to wait to generate a disclosure until they could determine, for example, that they do not have any "contemporaneous" proceeds for a particular transaction. Such timing would also permit dealers who, on a voluntary basis, choose to disclose mark-ups and mark-downs on all principal transactions to generate customer confirmations at the time of trade, should they choose to do so. To clarify, a dealer would not be expected to cancel and resend a confirmation to revise the mark-up or mark-down disclosure solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to the calculation of the mark-up or mark-down under the proposed guidance. Where, however, a dealer has contemporaneous proceeds by the time of generation of the disclosure, the dealer presumptively must establish the prevailing market price of the municipal security by reference to such contemporaneous proceeds.[44]

Consideration of Benefits and Costs

The MSRB believes that requiring dealers to disclose their mark-ups on retail customer confirmations based on the proposed amendments to Rule G–30 would provide meaningful and useful pricing information to a significant number of retail investors and may lower transaction costs for retail transactions. The MSRB also believes that the proposed amendments would provide retail customers engaged in municipal securities transactions covered by the rule with information more comparable to that currently received by retail customers in equity securities transactions and municipal securities transactions in which the dealer acts in an agent capacity. In addition, the disclosure may improve investor confidence, better enable customers to evaluate the costs and quality of the execution service that dealers provide, promote transparency into dealers' pricing practices, improve communication between dealers and their customers, and make the enforcement of Rule G–30 more efficient.

The MSRB believes that the proposed amendments to Rule G–30 reflect an appropriate balance between consistency with existing FINRA guidance for determining prevailing market price in other fixed income securities markets and modifications to address circumstances under which use of the FINRA guidance in the municipal securities market might be inappropriate (*e.g.,* treatment of similar securities).[45] The MSRB also believes that the guidance would promote consistent compliance by dealers with their existing fair-pricing obligations under MSRB rules and would support effective compliance with the proposed amendments to Rule G–15.

The MSRB recognizes, however, that the proposed rule change, comprised of amendments to both Rule G–15 and Rule G–30, would impose burdens and costs on dealers.[46] In MSRB Notices

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[42] For example, assume Dealer A1, a market-facing dealer, and Dealer A2, a retail customer-facing dealer, are affiliates both owned by Company A. On the same trading day, Dealer A1 purchases municipal security X from an unaffiliated dealer at $90 ("Transaction 1"). Dealer A1 displays municipal security X for sale at $93 on Dealer A2's customer-facing platform, on which other dealers have not frequently participated. A retail customer places an order to purchase municipal security X from Dealer A2 at the displayed price of $93. Dealer A2 purchases municipal security X from Dealer A1 at $93 in a non-arms-length transaction within the meaning of proposed amended Rule G–15 ("Transaction 2"). Dealer A2 then sells municipal security X to the retail customer at $93, plus $1 trading fee ("Transaction 3"). During the day, there are no other transactions in municipal security X and no other dealers display any price for municipal security X. In this example, Transaction 2 should not be used to indicate Dealer A2's contemporaneous cost. Instead, Dealer A2 would be required to "look through" Transaction 2, a non-arm's length transaction with affiliated Dealer A1, and use Transaction 1 and the time of that trade and the related cost to Dealer A1 in determining the prevailing market price.

[43] For example, assume Dealer A systematically inputs the mark-up-related information into its systems intra-day for the generation of confirmations. At 9:00 a.m., Dealer A purchases municipal security X from a customer at a price of 98. At 1:00 p.m., Dealer A sells such security to another dealer at a price of 100. Dealer A does not sell municipal security X at any other time before 1:00 p.m. At the time of the 9:00 a.m. transaction, Dealer A does not have any contemporaneous proceeds for municipal security X. Therefore, to determine the prevailing market price for municipal security X, Dealer A would proceed down the waterfall to the next category of factors—in this case, the hierarchy of pricing factors, as discussed *supra.* Dealer A would not be required to consider the price of 100, which the dealer would only know at 1:00 p.m. In contrast, assuming instead that Dealer A systematically inputs the mark-up-related information into its systems for confirmation generation at the end of the day, under the same facts as above, it would be required to consider, to the extent required by the prevailing market price guidance, the 1:00 p.m. inter-dealer trade price in determining the prevailing market price and the related mark-down to be disclosed for the 9:00 a.m. purchase.

[44] For example, a dealer that operates an alternative trading system or ATS may often, if not always, be in a position to identify its contemporaneous proceeds in connection with a purchase from a customer. Also, as discussed in *supra* n. 18, under Rule G–18, Supplementary Material .03, a dealer must make every effort to execute a customer transaction promptly, taking into account prevailing market conditions. Any intentional delay of a transaction to avoid recognizing proceeds as contemporaneous at the time of a transaction or otherwise would be contrary to these duties to customers. A dealer found to purposefully delay the execution of a customer order for such purposes also may be in violation of Rule G–17, on conduct of municipal securities and municipal advisory activities.

[45] For example, the municipal securities market includes a larger number of issuers and larger number of outstanding securities than the corporate bond market, and most municipal securities trade less frequently in the secondary market. In addition, many municipal securities are subject to different tax rules and treatment, and have different credit structures, enhancements and redemption features that may not be applicable to or prevalent for other fixed income securities.

[46] The MSRB's evaluation of the potential costs does not consider all of the costs associated with the proposal, but instead focuses on the incremental costs attributable to it that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with the proposed rule change to isolate the costs

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2014–20, 2015–16 and 2016–07, the MSRB specifically solicited comment on the potential costs of the draft amendments contained in those notices. While commenters stated that the initial and the revised confirmation disclosure proposals would impose significant implementation costs, no commenters provided specific cost estimates, data to support cost estimates, or a framework to assess anticipated costs.

Among other things, the proposed rule change would require dealers to develop and deploy a methodology to satisfy the disclosure requirement, identify trades subject to the disclosure, convey the mark-up on the customer confirmation, determine the prevailing market price and the mark-up, and adopt policies and procedures to track and ensure compliance with the requirement. To apply the "look through" to non-arms-length transactions with affiliates, dealers also would need to obtain the price paid or proceeds received and the time of the affiliate's trade with the third party. The MSRB sought data in the above-referenced notices that would facilitate quantification of these costs, but did not receive any data from commenters.

Any such costs, however, may be mitigated under certain circumstances. Dealers choosing to provide disclosure on all customer transactions would not incur the cost associated with identifying trades subject to the disclosure requirement; dealers already disclosing mark-ups to retail customers likely would incur lower costs associated with modifying customer confirmations, and dealers with processes in place to evaluate prevailing market price in compliance with FINRA Rule 2121 and MSRB Rule G–30 may be able to leverage those processes to comply with the proposed amendments to Rule G–30.

Based on comments received in response to the Notices, the MSRB made a number of changes to the draft amendments in an effort to make implementation less burdensome. These changes include utilizing existing processes for identifying retail customers, providing detailed prevailing market price guidance alongside the mark-up disclosure proposal, and ensuring that prevailing market price could be determined in the least burdensome way among the reasonable alternatives.

The MSRB believes that the proposed rule change reflects the overall lowest cost approach to achieving the regulatory objective. To reach that conclusion, the MSRB evaluated several reasonable regulatory alternatives including relying solely on modifications to EMMA, requiring the disclosure of a "reference price" rather than mark-up, and providing only a mark-up disclosure rule without accompanying prevailing market price guidance. These alternatives were deemed to either not sufficiently address the identified need (in the case of the EMMA alternative) or to represent approaches that offered lesser benefits and greater costs.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act,[47] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act[48] because it would provide retail customers with meaningful and useful additional pricing information that retail customers typically cannot readily obtain through existing data sources such as EMMA. This belief is supported by the joint investor testing, which indicated that investors would find aspects of the proposed requirements useful, including disclosure of the time of execution and mark-up or mark-down in a municipal securities transaction both as a dollar amount and as a percentage of the prevailing market price. The MSRB believes that a reference and hyperlink to the Security Details page of EMMA, along with a brief description of the type of information available on that page, will provide retail investors with a more comprehensive picture of the market for a security on a given day and believes that requiring a link to EMMA would increase investors' awareness of, and ability to access, this information. Additionally, results from the joint investor survey support the value to investors of a security-specific link to EMMA, rather than a link to the EMMA homepage. The MSRB believes that the proposed rule change will better enable customers to evaluate the cost of the services that dealers provide by helping customers understand mark-ups or mark-downs from the prevailing market prices in specific transactions. The MSRB also believes that this type of information will promote transparency into dealers' pricing practices and encourage communications between dealers and their customers about the execution of their municipal securities transactions. The MSRB further believes the proposed rule change will provide customers with additional information that may assist them in detecting practices that are possibly improper, which would supplement existing municipal securities enforcement programs.

The proposed amendment to Supplementary Material .01(a) to Rule G–30 will clarify the applicable "reasonable diligence" standard in that provision and conform to existing supplementary material referencing that standard. The proposed amendments to Supplementary Material .01(d) to Rule G–30 will clarify the relationship between that provision and the new proposed Supplementary Material .06 containing the proposed prevailing market price guidance and aid in understanding of the overall rule.

The proposed guidance on prevailing market price will provide dealers with additional guidance for determining prevailing market price in order to aid in compliance with their fair-pricing and mark-up disclosure obligations. The MSRB believes that clarifying the standard for correctly identifying the prevailing market price of a municipal security for purposes of calculating a mark-up, clarifying the additional obligations of a dealer when it seeks to use a measure other than the dealer's own contemporaneous cost (proceeds) as the prevailing market price and confirming that similar securities and economic models may be used in certain instances to determine the prevailing market price are measures designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities, prevent fraudulent practices, promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C)[49] of the Act requires that MSRB rules not be designed to impose any burden on competition not necessary or

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attributable to the incremental requirements of the proposal.

[47] 15 U.S.C. 78*o*–4(b)(2)(C).

[48] *Id.*

[49] *Id.*

appropriate in furtherance of the purposes of the Act.

The MSRB believes that the proposed rule change will improve price transparency and foster greater price competition among dealers. The MSRB recognizes that some dealers may exit the market or consolidate with other dealers as a result of the costs associated with the proposed rule change relative to the baseline. However, the MSRB does not believe—and is not aware of any data that suggest—that the number of dealers exiting the market or consolidating would materially impact competition.

Some commenters noted that the requirement to make a disclosure to retail customers if the dealer engaged in both the retail customer's transaction and one or more offsetting transactions on the same day could disproportionately impact smaller dealers as larger dealers might be more able to hold positions overnight and not trigger the proposed disclosure requirement. The MSRB has noted that any intentional delay of a customer execution to avoid a disclosure requirement would be contrary to a dealer's obligations under Rules G–30, G–18, on best execution, and G–17, on conduct of municipal securities and municipal advisory activities. If the proposed amendments are approved, the MSRB expects that FINRA would monitor trading patterns to ensure dealers are not purposely delaying a customer execution to avoid the disclosure.

Although commenters did not provide any data to support a quantification of the costs associated with these proposals, commenters did indicate that the costs associated with modifying systems to comply with these proposals would be significant. It is possible that larger dealers may be better able to absorb these costs than smaller dealers and that smaller dealers could be forced to exit the market or pass a larger share of the implementation costs on to customers. The MSRB believes that these concerns may be mitigated by several factors. As noted above, dealers choosing to disclose to all customers may not incur the costs associated with identifying transactions that require disclosure and dealers engaging in relatively fewer transactions may be able to develop processes for determining prevailing market price that are relatively less costly than larger, more active dealers. In addition, the MSRB believes that smaller dealers are more likely to have their customer confirmations generated by clearing firms. To the extent that clearing firms would not pass along the full implementation cost to each introducing firm, small firms may incur lower costs in certain areas than large firms.

The proposed rule change may disproportionately impact less active dealers that, as indicated by data, currently charge relatively higher mark-ups than more active dealers. However, overall, the MSRB believes that the burdens on competition will be limited and the proposed rule change will not impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. In addition, the MSRB believes that the proposed rule change may foster additional price competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Proposed Amendments to Rule G–15

The revised confirmation disclosure proposal was published for comment in MSRB Notice 2015–16 (September 24, 2015), and was preceded by the initial confirmation disclosure proposal in MSRB Notice 2014–20 (November 17, 2014). The MSRB received 30 comments in response to MSRB Notice 2014–20,[50] and 25 comments in response to MSRB Notice 2015–16.[51] A copy of MSRB

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[50] *See* Letter from Eric Bederman, Chief Operating and Compliance Officer, Bernardi Securities, dated December 26, 2014 ("Bernardi Letter I"); Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated January 20, 2015 ("BDA Letter I"); Letter from Chris Melton, Executive Vice President, Coastal Securities, dated January 16, 2015 ("Coastal Securities Letter I"); Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, dated January 20, 2015 ("CFA Letter I"); Letter from Larry E. Fondren, President and Chief Executive Officer, DelphX LLC, dated January 7, 2015 ("DelphX Letter I"); Letter from Herbert Diamant, President, Diamant Investments Corp., dated January 9, 2015 ("Diamant Letter I"); Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services LLC and Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, Fidelity Investments, dated January 20, 2015 ("Fidelity Letter I"); Letter from Darren Wasney, Program Manager, Financial Information Forum, dated January 20, 2015 ("FIF Letter I"); Letter from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, dated January 20, 2015 ("FSI Institute Letter I"); Letter from Rich Foster, Vice President and Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable, dated January 20, 2015 ("Financial Services Roundtable Letter I"); Emails from Gerald Heilpern, dated December 9, 2014, December 18, 2014 and January 8, 2015 (collectively "Heilpern Letter I"); Letter from Alexander I. Rorke, Senior Managing Director, Municipal Securities Group, Hilliard Lyons, dated January 20, 2015 ("Hilliard Letter I"); Letter from Thomas E. Dannenberg, President and Chief Executive Officer, Hutchinson Shockey Erley and Co., dated January 20, 2015 ("Hutchinson Shockey Letter I"); Letter from Andrew Hausman, President, Pricing & Reference Data, Interactive Data, dated January 20, 2015 ("Interactive Data Letter I"); Email from John Smith, dated December 10, 2014 ("Smith Letter I"); Email from Jorge Rosso, dated November 24, 2014 ("Rosso Letter I"); Letter from Karin Tex, dated January 12, 2015 ("Tex Letter I"); Email from George J. McLiney, Jr., McLiney and Company, dated December 22, 2014 ("McLiney Letter I"); Letter from Vincent Lumia, Managing Director, Morgan Stanley Smith Barney LLC, dated January 20, 2015 ("Morgan Stanley Letter I"); Letter from Peter G. Brandel, Senior Vice President, Municipal Bond Trading, and Kenneth T. Kerr, Senior Vice President, Municipal Bond Trading, Nathan Hale Capital, LLC, dated January 20, 2015 ("Nathan Hale Letter I"); Letter from Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, U.S. Securities and Exchange Commission, dated January 20, 2015 ("SEC Investor Advocate Letter I"); Email from Private Citizen, dated November 23, 2014 ("Private Citizen Letter I"); Letter from Richard Seelaus, R. Seelaus & Co., Inc., dated January 8, 2015 ("R. Seelaus Letter I"); Email from Paige Pierce, RW Smith & Associates, LLC, dated January 21, 2015 ("RW Smith Letter I"); Letter from Sean Davy, Managing Director, Capital Markets Division, and David L. Cohen, Managing Director and Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association, dated January 20, 2015 ("SIFMA Letter I"); Letter from Gregory Carlin, Vice President, Standard & Poor's Securities Evaluations, Inc., dated January 20, 2015 ("S&P Letter I"); Letter from Kyle C. Wootten, Deputy Director—Compliance and Regulatory, Thomson Reuters, dated January 16, 2015 ("Thomson Reuters Letter I"); Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated January 20, 2015 ("Wells Fargo Letter I").

[51] *See* Email from Aaron Botbyl, dated October 9, 2015 ("Botbyl Letter II"); Letter from Eric Bederman, Senior Vice President, Chief Operating and Compliance Officer, Bernardi Securities, Inc., dated December 4, 2015 ("Bernardi Letter II"); Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated December 11, 2015 ("BDA Letter II"); Letter from Kurt N. Schacht, Managing Director, Standards and Financial Market Integrity, and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute, dated December 11, 2015 ("CFA Institute Letter II"); Letter from Jason Clague, Senior Vice President, Trading & Middle Office Services, Charles Schwab & Co. Inc., dated December 11, 2015 ("Schwab Letter II"); Email from Chris Melton, Coastal Securities, dated October 30, 2015 ("Coastal Securities Letter II"); Email from Christopher [Last Name Withheld], dated September 25, 2015 ("Christopher Letter II"); Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, dated December 11, 2015 ("CFA Letter II"); Letter from Herbert Diamant, President, Diamant Investment Corporation, dated November 30, 2015 ("Diamant Letter II"); Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, and Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, Fidelity Investments, dated December 11, 2015 ("Fidelity Letter II"); Letter from Darren Wasney, Program Manager, Financial Information Forum, dated December 11, 2015 ("FIF Letter II"); Letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated December 11, 2015, ("FSI Institute Letter II"); Letter from Gerald Heilpern, undated ("Heilpern Letter II"); Email from Jonathan Bricker, dated October 20, 2015; Letter from David P. Bergers, General Counsel, LPL Financial LLC, dated December 10, 2015 ("LPL Letter II"); Letter from Elizabeth Dennis, Managing Director, Morgan Stanley Smith Barney LLC, dated December 11, 2015 ("Morgan Stanley Letter II"); Letter from Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, U.S. Securities and Exchange Commission, dated

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Notice 2014–20 is attached as Exhibit 2a; a list of comment letters received in response is attached as Exhibit 2b; and copies of the comment letters are attached as Exhibit 2c. A copy of MSRB Notice 2015–16 is attached as Exhibit 2d; a list of comment letters received in response is attached as Exhibit 2e; and copies of the comment letters are attached as Exhibit 2f.

Summary of Initial Confirmation Disclosure Proposal and Comments Received

As proposed in MSRB Notice 2014–20, for same-day principal transactions in municipal securities, dealers would have been required to disclose on the customer confirmation the price to the dealer in a "reference transaction" and the differential between the price to the customer and the price to the dealer. The initial proposal would have applied where the transaction with the customer involved 100 bonds or fewer or bonds in a par amount of $100,000 or less, which was designed to capture those trades that are retail in nature.

Of the 30 comments the MSRB received on the proposal, six supported the proposal, while 24 commenters generally opposed the proposal or made recommendations on ways to narrow substantially the scope of the proposal. Generally, commenters that supported the proposal stated that the proposed confirmation disclosure would provide additional post-trade information to investors that would be otherwise difficult to ascertain.[52] Three commenters, including the Consumer Federation of America and the SEC Investor Advocate, stated that this additional information would put investors in a better position to assess whether they are paying fair prices and the quality of the services provided by their dealer, and also could assist investors in detecting improper practices.[53] The Consumer Federation of America indicated that the proposal would foster increased price competition in fixed income markets, which would ultimately lower investors' transaction costs.[54] Two commenters recommended that the proposal not be limited to retail trades under the proposed size threshold, but that disclosure should be made on all trades involving retail customers, regardless of size.[55]

Other commenters opposed the proposal on several grounds. Commenters questioned whether the proposed disclosure would provide investors with useful information,[56] or whether the disclosure would simply create confusion among investors.[57] Commenters asserted that the proposed methodology for determining the reference transaction would be overly complex[58] and costly for dealers to implement.[59] Commenters also indicated the proposal could impair liquidity in the municipal market.[60]

Several commenters suggested ways to narrow the scope of the proposal. Some commenters recommended that the MSRB limit the disclosure obligation to riskless principal transactions involving retail investors, as this would more accurately reflect dealer compensation and transaction costs,[61] and would be more consistent with the stated objectives of the SEC in this area and of the proposal itself.[62] Some commenters suggested that the proposed rule should apply to riskless principal transactions as previously defined by the Commission for equity trades, wherein the dealer has an "order in hand" at the time of execution.[63] One commenter, however, did not think that such a limitation would appreciably reduce the complexity or cost of the proposal.[64] Commenters also suggested that the MSRB eliminate institutional trades from the scope of the proposal: For example, by not covering institutional accounts as defined in Rule G–8(a)(xi) or sophisticated municipal market professionals ("SMMP") as defined in MSRB Rule D–15.[65] Both Fidelity and SIFMA stated that the proposal should permit trading desks that are separately operated within a firm to match only their own trades for purposes of pricing disclosure.[66] Morgan Stanley and SIFMA also stated that transactions between affiliates should not constitute a firm principal trade that, if accompanied by a same-day customer trade, would trigger the disclosure requirement.[67] Commenters also suggested that the proposal exempt the disclosure of mark-ups on new issues.[68] One commenter suggested specifically that this exemption should cover transactions in new issues executed at the public offering price on the date of the issue's sale.[69]

Rather than proposing pricing reference disclosure, several commenters suggested that the MSRB instead enhance EMMA, in part by providing greater investor education about EMMA,[70] and requiring dealers to make EMMA more accessible[71] by, for example, providing more near-real-time EMMA information to investors[72] or providing a link to EMMA on customer confirmations,[73] or by aggregating all TRACE and EMMA data on a single Web site.[74]

Summary of Revised Confirmation Disclosure Proposal and Comments Received

In response to the comments received on MSRB Notice 2014–20, the MSRB proposed a different disclosure standard that was built upon the framework of the initial confirmation disclosure proposal, but modified a number of its

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December 11, 2015 ("SEC Investor Advocate Letter II"); Letter from Patrick Luby, dated December 11, 2015 ("Luby Letter II"); Letter from Hugh D. Berkson, President, Public Investors Arbitration Bar Association, dated December 8, 2015 ("PIABA Letter II"); Letter from David L. Cohen, Senior Counsel and Director, RBC Capital Markets, LLC, dated December 15, 2015 ("RBC Letter II"); Letter from Paige W. Pierce, President & Chief Executive Officer, RW Smith and Associates, LLC, dated December 11, 2015 ("RW Smith Letter II"); Letter from Sean Davy, Managing Director, Capital Markets Division, and Leslie M. Norwood, Managing Director & Associate General Counsel, Municipal Securities Division, Securities Industry and Financial Markets Association, dated December 11, 2015 ("SIFMA Letter II"); Letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 11, 2015 ("Thomson Reuters Letter II"); Letter from Thomas S. Vales, Chief Executive Officer, TMC Bonds LLC, dated December 11, 2015 ("TMC Bonds Letter II"); Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors LLC, dated December 11, 2015 ("Wells Fargo Letter II").

[52] *See, e.g.,* SEC Investor Advocate Letter I at 1–2.

[53] *See* CFA Letter I at 1; DelphX Letter I at 2; SEC Investor Advocate Letter I at 2.

[54] *See* CFA Letter I at 1.

[55] *See* Hutchinson Shockey Letter I at 2; Thomson Reuters Letter I at 7.

[56] *See* Diamant Letter I at 5.

[57] *See* BDA Letter I at 4–5; FSI Institute Letter I at 3; Morgan Stanley Letter I at 2; SIFMA Letter I at 17; Wells Fargo Letter I at 5.

[58] *See* Fidelity Letter I at 4; FIF Letter I at 2; SIFMA Letter I at 24–26; Thomson Reuters Letter I at 2; Wells Fargo Letter I at 8.

[59] *See* BDA Letter I at 2–3; Diamant Letter I at 7–8; Fidelity Letter I at 4–5; FIF Letter I at 2; FSI Institute Letter I at 5; Financial Services Roundtable Letter I at 5; Morgan Stanley Letter I at 3; Wells Fargo Letter I at 7–9.

[60] *See* Diamant Letter I at 8–9; FSI Institute Letter I at 3.

[61] *See* Hilliard Letter I at 2; Morgan Stanley Letter I at 2; SIFMA Letter I at 29; Wells Fargo Letter I at 11.

[62] *See* SIFMA Letter I at 31.

[63] *See* Hilliard Letter I at 2; SIFMA Letter I at 30; Wells Fargo Letter I at 11.

[64] *See* Thomson Reuters Letter I at 7.

[65] *See* BDA Letter I at 6; FIF Letter I at 3; Morgan Stanley Letter I at 3; SIFMA Letter I at 35.

[66] *See* Fidelity Letter I at 8; SIFMA Letter I at 36.

[67] *See* Morgan Stanley Letter I at 3; SIFMA Letter I at 21.

[68] *See* BDA Letter I at 6; Coastal Securities Letter I at 1; SIFMA Letter I at 22.

[69] *See* Coastal Securities Letter I at 1.

[70] *See* Fidelity Letter I at 7; FSI Institute Letter I at 6–7; Financial Services Roundtable Letter I at 6; Hilliard Letter I at 2–3; Morgan Stanley Letter I at 2; SIFMA Letter I at 15–16.

[71] *See* Thomson Reuters Letter I at 6.

[72] *See* Wells Fargo Letter I at 7.

[73] *See* Fidelity Letter I at 7; FSI Institute Letter I at 6; Hilliard Letter I at 3; Morgan Stanley Letter I at 2; SIFMA Letter I at 15–16.

[74] *See* FIF Letter I at 4.

key aspects and added several exceptions to the proposed disclosure requirement.[75]

First, in response to concerns that the disclosures may be misconstrued by investors who may equate them with mark-ups or believe that they are always reflective of contemporaneous market conditions, the MSRB proposed requiring dealers to disclose the amount of mark-up or mark-down, as calculated from the prevailing market price for the security, rather than disclose the difference between the customer's price and the dealer's price in a reference transaction. The MSRB also proposed that the mark-up or mark-down disclosure be expressed as a total dollar amount and as a percentage.

Second, the MSRB proposed to narrow the disclosure time window from a same-day disclosure standard to a two-hour disclosure standard. Thus, mark-up disclosure would be required only where the dealer's same-side of the market transaction occurs within the two hours preceding or following the customer transaction. The MSRB explained that it believed that such a time frame would be sufficient to cover transactions that could be considered "riskless principal" transactions under any current market understanding of the term, but that it was not proposing a broader same-day trigger out of concern about the potential for additional costs and complexities associated with a broader disclosure time trigger. However, the MSRB specifically sought public comment as to whether a broader disclosure time trigger, such as a same-day standard, might be warranted.

Third, the MSRB proposed to replace the transaction size retail-customer proxy (*i.e.*, 100 bonds or fewer or bonds in a par amount of $100,000 or less) proposed in the initial confirmation disclosure proposal with a status-based exclusion for transactions that involve an institutional account, as defined in Rule G–8(a)(xi). This would ensure that all eligible transactions involving retail customers, regardless of size or par amount, would be subject to the proposed disclosure and was responsive to dealer concerns about using disparate definitions of a retail customer.

Fourth, the MSRB proposed to require the disclosure of two additional data points, even if mark-up disclosure would not be required under the MSRB's proposal. The MSRB proposed to require that: (i) Dealers add a CUSIP-specific link to EMMA on all customer confirmations and (ii) dealers disclose the time of execution of a customer's trade on all customer confirmations. These disclosures were intended to provide context for the mark-up disclosures received by providing retail customers with a comprehensive view of the market for their security, including the market as of the time of trade. They were also responsive to commenter suggestions that the MSRB leverage EMMA and direct investors to the more comprehensive information there.

Finally, the MSRB proposed three exceptions to the mark-up disclosure requirement. Under the first exception, in response to concerns from commenters that compensation disclosure is not warranted for primary market transactions, the MSRB proposed to provide an exclusion from a confirmation disclosure requirement for a customer transaction that is a "list offering price transaction," as defined in paragraph (d)(vii)(A) of Rule G–14 RTRS Procedures. A "list offering price transaction" is a primary market sale transaction executed on the first day of trading of a new issue by a sole underwriter, syndicate manager, syndicate member, selling group member, or distribution participant to a customer at the published list offering price for the security.

Under the second exception, in response to concerns from commenters that having the disclosure requirements triggered by trades made by separate trading departments or desks would undermine the legal and operational separation of those desks, the MSRB proposed to except from the mark-up disclosure requirement transactions between functionally separate trading desks. Under this exception, confirmation disclosure would not be required where, for example, the customer transaction was executed by a principal trading desk that is functionally separate from the retail-side desk if the functionally separate principal trading desk had no knowledge of the customer transaction.

Under the third exception, in response to concerns from commenters about having the disclosure requirements triggered by certain trades between affiliates, the MSRB proposed to require dealers to "look through" a transaction with an affiliated dealer and substitute the affiliate's trade with the third party from whom the dealer purchased or to whom the dealer sold the security to determine whether disclosure of the mark-up would be required. This "look through" would apply only for dealers that, on an exclusive basis, acquire municipal securities from, or sell municipal securities to, an affiliate that holds inventory in such securities and transacts with other market participants. Some commenters stated that acquiring a security through an affiliate was functionally similar to an inventory trade, and that this trade would be of limited value,[76] particularly where the inter-affiliate trades are tantamount to a booking move across affiliates.[77]

As an ongoing alternative to the revised confirmation disclosure proposal, the MSRB also sought comment on a revised pricing reference proposal that was largely consistent with a revised confirmation disclosure proposal then under consideration by FINRA[78] and, more broadly, sought comment on the revised FINRA confirmation disclosure proposal itself. Under the revised FINRA confirmation disclosure proposal, if a firm sells to a customer as principal and on the same day buys the same security as principal from another party in one or more transaction(s) that equal or exceed the size of the customer transaction, the firm would have to disclose on the customer confirmation the price to the customer; the price to the firm of the same-day trade (the "reference price"); and the difference between those two prices. The revised FINRA confirmation disclosure proposal would permit firms to use alternative methodologies for calculating the reference price for more complex trade scenarios and would also permit firms to omit the reference price in the event of a material change in the price of the security between the time of the firm principal trade and the customer trade. Lastly, the revised FINRA confirmation disclosure proposal would require firms to provide a link to TRACE data on confirmations that are subject to the disclosure requirement.

The revised FINRA confirmation disclosure proposal also contained a number of exclusions that were generally consistent with those in the MSRB revised confirmation disclosure proposal. These included exclusions for: Transactions that involve an institutional account; transactions that are part of a fixed price new issue and are sold at the fixed price offering price; firm principal trades that are executed on a trading desk functionally separate from the retail trading desk for purposes of calculating a reference price; and firm principal trades with affiliates for positions that were acquired by the affiliate on a previous trading day.

In response to the MSRB's revised confirmation disclosure proposal, some commenters reiterated that retail investors would benefit from some form of enhanced price disclosure. For example, the Consumer Federation of America stated that increased price disclosure would provide investors with the opportunity to make more informed investment decisions, and would foster increased price competition in the fixed income markets.[79] The SEC Investor Advocate stated that some kind of regulatory solution was necessary, as retail investors in fixed income securities "remain disadvantaged by the lack of information they receive in confirmation statements." [80] The PIABA stated that "abuse of undisclosed mark-ups and mark-downs is not a hypothetical problem," and that making additional pricing information available could result in customers being charged more favorable prices.[81]

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[75] *See* MSRB Notice 2015–16 (September 24, 2015).

[76] *See* SIFMA Letter I at 21.

[77] *See* Morgan Stanley Letter I at 3.

[78] *See* FINRA Regulatory Notice 15–36 (October 2015).

A number of commenters supported the MSRB's proposal of disclosing the mark-up based on the prevailing market price instead of the reference price.[82] Both BDA and Schwab stated that the reference price proposal would be costly, difficult for dealers to implement and for retail customers to understand, and may not provide customers with meaningful information about the costs associated with particular transactions.[83] Schwab noted that, under the reference price proposal, a customer may receive disclosure for the execution of one lot of a particular order, but not for another lot of the same order.[84] Schwab stated that the reference price proposal would also reflect market fluctuations, so that a customer may infer that the dealer lost money on a transaction with a customer, even if a mark-up was charged.[85] FSI noted that using prevailing market price would ensure that customers "receive the most reasonably accurate understanding of the cost of their trade." [86] In addition, FSI indicated that "structuring pricing disclosure around prevailing market price will align any new disclosure requirements with existing fair pricing policies enforced by both FINRA and the MSRB." [87] Fidelity stated that the proposed disclosure requirement should focus on the difference between the price the customer was charged for a fixed income security and the prevailing market price of the fixed income security.[88] Fidelity noted that a dealer's actual contemporaneous costs or proceeds are a reasonable proxy for the prevailing market price in some situations, but stated that there are many situations in which a dealer's costs or proceeds are not a reasonable proxy for the prevailing market price.[89] Fidelity proposed that the prevailing market price be defined as the dealer's best available price for the subject security under the best available market at the time of trade execution.[90] Fidelity proposed different methodologies that dealers could apply when determining the prevailing market price, including (1) looking at a trader's mark-to-market at the end of the day; (2) contemporaneous cost; (3) top of book; and (4) vendor solutions that offer real time valuations for certain securities.[91]

In supporting the MSRB's mark-up disclosure approach, the SEC Investor Advocate noted that although mark-up disclosure may lead to disclosure to an investor of information indicating a smaller cost under some circumstances than under the reference price proposal, it nonetheless provides relevant information about the actual compensation the investor is paying the dealer for the transaction, reflects market conditions and has the potential to provide a more accurate benchmark for calculating transaction costs.[92] LPL Financial noted that mark-up disclosure based on prevailing market price would be relevant to retail transactions in all kinds of fixed income securities that might be the subject of future disclosure requirements.[93]

Some commenters opposed limiting the disclosure requirement to circumstances where the dealer principal and customer trades occur closer in time to each other, such as two hours, as the MSRB previously had proposed. Coastal Securities, the Consumer Federation of America and the SEC Investor Advocate noted that a shorter timeframe would increase the possibility that dealers would attempt to evade the disclosure requirement by holding onto positions.[94] Other commenters, including Morgan Stanley and SIFMA, supported the two-hour timeframe for disclosure.[95] These commenters stated that the two-hour window would capture the majority of the trades at issue, and would also be easier to implement.[96] Commenters stated that the concern that a shorter timeframe would facilitate gaming of the disclosure requirement was misplaced, as it was unlikely that dealers would change trading patterns and increase risk exposure merely to avoid disclosure.[97] One commenter also said that regulators have sufficient access to data that would show whether dealers were attempting to game a two-hour disclosure window.[98]

Commenters generally supported the change of the scope of the proposal from the "qualifying size" standard (transactions involving 100 bonds or fewer or $100,000 face amount or less) to all transactions with non-institutional accounts.[99] The Consumer Federation of America noted that the revised standard would help ensure that all retail transactions would receive disclosure, regardless of size.[100]

Three commenters opposed the proposal to require dealers to disclose the time of the execution of the customer transaction.[101] FIF stated that this proposal would create additional expense for dealers, and information related to time of execution could not be adjusted in connection with any trade modifications, cancellations or corrections.[102] FIF also indicated that the execution time is not necessary because "the number of trades in each CUSIP listed on EMMA are so limited that investors will not have difficulty in ascertaining the prevailing market price at or around the time of their trade." [103] Schwab indicated that this would not be a necessary data point for investors if mark-ups are disclosed from the prevailing market price.[104]

Other commenters, however, supported including the time of execution of the customer trade.[105] Thomson Reuters stated that including the time of execution would allow retail investors to more easily identify relevant trade data on EMMA[106] and FSI stated that this would allow investors to understand the market for their security at the time of their trade.[107]

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[79] *See* CFA Letter II at 6.

[80] *See* SEC Investor Advocate Letter II at 2.

[81] *See* PIABA Letter II at 3.

[82] *See* BDA Letter II at 6; Fidelity Letter II at 5; FSI Letter II at 5; LPL Letter II at 1; Schwab Letter II at 3; SEC Investor Advocate Letter II at 5.

[83] *See* BDA Letter II at 4–5; Schwab Letter II at 2.

[84] *See* Schwab Letter II at 2.

[85] *See* Schwab Letter II at 2.

[86] *See* FSI Letter II at 5.

[87] *Id.*

[88] *See* Fidelity Letter II at 5, 7–8.

[89] *Id.* at 7.

[90] *Id.*

[91] *Id.* at 8.

[92] *See* SEC Investor Advocate Letter II at 5.

[93] *See* LPL Letter II at 4.

[94] *See* Coastal Securities Letter II at 1; CFA Letter II at 2; SEC Investor Advocate Letter II at 5.

[95] *See* Bernardi Letter II at 1; CFA Institute Letter II at 1; Coastal Securities Letter II; Morgan Stanley Letter II at 3; RBC Letter II at 2; SIFMA Letter II at 7.

[96] *See* CFA Institute Letter II at 5; Morgan Stanley Letter II at 3; SIFMA Letter II at 7.

[97] *See* Morgan Stanley Letter II at 3; RW Smith Letter II at 2; SIFMA Letter II at 10.

[98] *See* RW Smith Letter II at 2.

[99] *See* CFA Letter II at 4; PIABA Letter II at 2; Schwab Letter II at 5; SIFMA Letter II at 15.

[100] *See* CFA Letter II at 4.

[101] *See* FIF Letter II at 5; Schwab Letter II at 6; SIFMA Letter II at 16.

[102] *See* FIF Letter II at 5.

[103] *See* FIF Letter II at 6.

[104] *See* Schwab Letter II at 6.

[105] *See* CFA Institute Letter II at 4; FSI Letter II at 7; Thomson Reuters Letter II at 2.

Several commenters supported adding a security-specific link to EMMA,[108] while other commenters, including FSI, SIFMA and Thomson Reuters, supported adding a general link to the EMMA Web site, noting that, in their view, a CUSIP-specific link could be inaccurate or misleading, and could be difficult for dealers to implement.[109] BDA stated that a general link to the main EMMA page would be operationally easier to achieve.[110]

Commenters supported the proposed exception for transactions involving separate trading desks,[111] although Schwab indicated that this exception should be subject to information barriers and rigorous oversight.[112] The Consumer Federation of America suggested the MSRB specifically require, in the rule text, that dealers have policies and procedures in place to ensure functional separation between trading desks,[113] and the SEC Investor Advocate suggested that the MSRB provide more "robust" guidance as to what constitutes a functional separation and applicable requirements.[114]

Some commenters supported the proposed requirement, in cases of transactions between affiliates, to "look through" to the affiliate's principal transaction for purposes of determining whether disclosure is required.[115] FIF and Thomson Reuters stated, however, that not all dealers are able to "look through" principal trades, given information barriers and the fact that dealers often conduct inter-dealer business on a completely separate platform than the retail business.[116]

Summary of Proposed Amendments to Rule G–30

The proposed amendments to Rule G–30 to provide prevailing market price guidance was published for comment in MSRB Notice 2016–07 (February 18, 2016). The MSRB received nine comment letters in response to the request for comment on the draft guidance.[117] A copy of MSRB Notice 2016–07 is attached as Exhibit 2g. A list of comment letters received in response to MSRB Notice 2016–07 is attached as Exhibit 2h, and copies of the comment letters received are attached as Exhibit 2i.

Summary of the Proposed Guidance and Comments Received

As proposed in MSRB Notice 2016–07, generally, the prevailing market price of a municipal security would be presumptively established by referring to the dealer's contemporaneous cost as incurred, or contemporaneous proceeds as obtained. If this presumption is either inapplicable or successfully rebutted, the prevailing market price would be determined by referring in sequence to: (1) A hierarchy of pricing factors, including contemporaneous inter-dealer transaction prices, institutional transaction prices, and if an actively traded security, contemporaneous quotations; (2) prices or yields from contemporaneous inter-dealer or institutional transactions in similar securities and yields from validated contemporaneous quotations in similar securities; and (3) economic models.

Of the nine comments the MSRB received on the proposal, the majority suggested alternatives or made recommendations to modify substantially more than one key aspect of the proposal.[118] The SEC Investor Advocate described the draft guidance as generally useful, clear, and consistent with the FINRA guidance, but urged the MSRB to tighten a perceived "loophole" with respect to transactions between affiliates.[119]

Other commenters opposed the draft guidance on several grounds. Commenters questioned the appropriateness of a hierarchical approach in the municipal market.[120] These commenters generally expressed a belief that while a prescriptive hierarchical approach may be appropriate for more liquid non-municipal debt securities, it is not appropriate for the more unique and heterogeneous municipal market.

A number of commenters stated that additional factors not permitted to be considered under the draft guidance should be expressly permitted to be considered when determining the prevailing market price of a municipal security. These include: Trade size;[121] spread to an index;[122] and side of the market.[123] Others still suggested modifying or providing additional guidance for certain factors that are required or permitted to be considered under the draft guidance such as isolated transactions;[124] economic models;[125] and similar securities.[126] One commenter requested additional guidance on the meaning of the term, "contemporaneous."[127]

One commenter suggested that SMMPs should be exempted from the fair pricing requirement under Rule G–30, reasoning that, if SMMPs are sophisticated enough to opt out of Rule G–18 best-execution protections, they should similarly be able to opt out of fair pricing protections.[128] Another commenter suggested that the draft guidance should be limited to apply only to non-institutional accounts, consistent with the scope of the mark-up disclosure proposal.[129]

Based on a concern that a disclosed mark-up could appear misleadingly small when calculated from a non-arms-length transaction with an affiliated dealer, the SEC Investor Advocate urged the MSRB to require dealers acquiring securities from, or selling securities to, an affiliated dealer to always ''look through'' a non-arms-length transaction with an affiliate in establishing prevailing market price.[130] The SEC Investor Advocate further suggested that the underlying concern could be addressed in a number of ways (or combination thereof), including potentially modifying the draft guidance, modifying the proposed mark-up disclosure requirement or providing further explanation regarding non-arms-length inter-affiliate transactions in any filing of a proposed rule change.[131]

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[106] *See* Thomson Reuters Letter II at 2.

[107] *See* FSI Letter II at 7.

[108] *See* Bernardi Letter at 1; CFA Institute Letter II at 3–4; Schwab Letter II at 6; Fidelity Letter II at 8; RBC Letter II at 2.

[109] *See* FSI Institute Letter II at 6; SIFMA Letter II at 19; Thomson Reuters Letter II at 2.

[110] *See* BDA Letter II at 3.

[111] *See* CFA Letter II at 5; CFA Institute Letter II at 3; Schwab Letter II at 6; SIFMA Letter II at 14–15.

[112] *See* Schwab Letter II at 6.

[113] *See* CFA Letter II at 5.

[114] *See* SEC Investor Advocate Letter II at 6.

[115] *See* CFA Institute Letter II at 3; Fidelity Letter II at 11–12; PIABA Letter II at 2; Schwab Letter at 6; SIFMA Letter II at 18.

[116] *See* FIF Letter II at 5; Thomson Reuters Letter II at 3.

[117] Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated March 31, 2016 ("BDA Letter III"); Emails from G. Lettieri, Breena LLC, dated February 23, 2016 and March 10, 2016 ("Breena Letter III"); Letter from Brian Shaw, dated March 28, 2016 ("Shaw Letter III"); Email from Herbert Murez, dated March 28, 2016 ("Murez Letter III"); Letter from Marcus Schuler, Head of Regulatory Affairs, Markit, dated March 31, 2016 ("Markit Letter III"); Letter from Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, U.S. Securities and Exchange Commission, dated March 31, 2016 ("SEC Investor Advocate Letter III"); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Municipal Securities Division, and Sean Davy, Managing Director, Capital Markets Division, Securities Industry and Financial Markets Association, dated March 31, 2016 ("SIFMA Letter III"); Letter from J. Ben Watkins III, Director, State of Florida, Division of Bond Finance, dated March 31, 2016 ("State of Florida Letter III"); Letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated March 31, 2016 ("Thomson Reuters Letter III").

[118] *See* Shaw Letter III at 2; Markit Letter III at 1–5; SEC Investor Advocate III at 5–8; SIFMA Letter III at 3–14; Thomson Reuters Letter III at 2.

[119] *See* SEC Investor Advocate Letter III at 8.

[120] *See* BDA Letter III at 2; Markit Letter III at 2.

[121] *See* SIFMA Letter III at 7; Thomson Reuters Letter III at 2; Markit Letter III at 4.

[122] *See* Thomson Reuters Letter III at 2.

[123] *See* SIFMA Letter III at 7.

[124] *See* Thomson Reuters Letter III at 2; SIFMA Letter III at 9.

[125] *See* Thomson Reuters Letter III at 2.

[126] *See* Thomson Reuters Letter III at 2; SIFMA Letter III at 8.

[127] *See* SIFMA Letter III at 6.

[128] *See* BDA Letter III at 4.

[129] *See* SIFMA Letter III at 9–10.

Commenters suggested that the MSRB should provide the market sufficient implementation time before any prevailing market price guidance is effective.[132] Two commenters specifically suggested that any final prevailing market price guidance and any final mark-up disclosure requirements should be adopted at the same time.[133] One commenter suggested a minimum three-year implementation period.[134]

A number of commenters suggested that the MSRB take an alternative approach to adopting prevailing market price guidance. One commenter suggested that the MSRB should permit dealers to rely on the use of third-party pricing vendors under certain conditions,[135] while another suggested the MSRB should calculate and disseminate a net weighted average price which should be used in place of the prevailing market price.[136]

One commenter stated that dealers may calculate different prevailing market prices from the same set of facts and that dealers should be permitted to rely on reasonably designed policies and procedures to determine, in an automated fashion, the prevailing market price of a security.[137] Others expressed concern about the burden on dealers in complying with the draft guidance, and questioned whether such burden would be outweighed by any benefits to the market.[138]

More generally, three commenters suggested that the MSRB should coordinate with FINRA to develop consistent guidance and standards with respect to determining the prevailing market price of a security, including, potentially, the making by FINRA of corresponding changes to the FINRA guidance.[139]

In response to the comments received on the draft guidance, the MSRB clarified in the text of the proposed guidance that the list of factors specifically set forth in the proposed guidance to be used in determining whether a municipal security is sufficiently similar to the subject security as to be a ''similar'' security under the proposed guidance is a non-exclusive list. The text of the proposed guidance also makes clear that the determination of whether such security is ''similar'' may be determined by all relevant factors.

With respect to isolated transactions, the proposed guidance now clarifies that the determination of whether a transaction is an ''isolated transaction'' as that term is used in the proposed guidance is not limited to a strictly temporal consideration, and that ''off-market transactions'' may be deemed isolated transactions under the proposed guidance.

The MSRB agrees with the SEC Investor Advocate's concern regarding the potential for misleading mark-up or mark-down calculations and disclosures when the mark-up or mark-down is determined by reference to a non-arms-length transaction with an affiliated dealer. The MSRB has addressed this concern, as discussed above, through a combination of provisions in the proposed mark-up disclosure requirement and explanation in this filing of the MSRB's intended meaning of the proposed prevailing market price guidance.[140]

The MSRB is not, at this time, providing any additional guidance regarding the defined term, ''contemporaneous,'' as that term is used in the proposed guidance. This term is used in the FINRA guidance and adoption of the same term and definition within the proposed guidance promotes consistency and harmonization across fixed income markets. However, as discussed above, the determination of prevailing market price, as a final matter for purposes of confirmation disclosure, may be made at the time of a dealer's generation of the disclosure.

As noted above, the MSRB recognizes that the determination of the prevailing market price of a particular security may not be identical across dealers, although the MSRB expects that even where dealers may reasonably arrive at different prevailing market prices for the same security, the difference between such prevailing market price determinations would typically be small. The MSRB would expect that dealers have reasonable policies and procedures in place to calculate the prevailing market price and that such policies and procedures are applied consistently across customers.

Also as noted above, the MSRB has been in close coordination with FINRA on the development of the MSRB's mark-up disclosure proposal and the proposed guidance. The MSRB believes that the MSRB proposals are generally harmonized with the FINRA confirmation disclosure proposal and the interpretation of FINRA guidance, as applicable and to the extent appropriate in light of the differences between the markets.

The MSRB believes that the cumulative effect of the MSRB's modifications and clarifications contained in the proposed guidance is to make the waterfall generally less subjective and more easily susceptible to programming (*e.g.*, specific guidance with respect to determining contemporaneous cost or proceeds, the ability to determine the prevailing market price at the time of the making of a disclosure and the ability to consider economic models earlier in the process to the extent there are no ''similar'' securities to be considered). At the same time, these modifications and clarifications provide dealers with a greater degree of flexibility with respect to certain elements of the waterfall (*e.g.*, more flexibility in determining the similarity of securities). The MSRB believes that these changes make the hierarchical approach more appropriate for the municipal market.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

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[130] *See* SEC Investor Advocate Letter III at 5–8.

[131] *Id.*

[132] *See* SIFMA Letter III at 13; Thomson Reuters Letter III at 2–3.

[133] *See* BDA Letter III at 2–3; SIFMA Letter III at 13.

[134] *See* SIFMA Letter III at 13.

[135] *See* Markit Letter III at 4.

[136] *See* Shaw Letter III at 2.

[137] *See* SIFMA Letter III at 3.

[138] *See* BDA Letter III at 1; State of Florida Letter III at 1; SIFMA Letter III at 14.

[139] *See* SIFMA Letter III at 5; Markit Letter III at 5; SEC Investor Advocate Letter III at 6.

[140] *See* discussion *supra,* Non-Arms-Length Affiliate Transactions.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2016–12 and should be submitted on or before October 4, 2016.

For the Commission, pursuant to delegated authority.[141]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21909 Filed 9–12–16; 8:45 am]

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[141] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78778; File Nos. SR–DTC–2016–007; SR–FICC–2016–005; SR–NSCC–2016–003]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to Clearing Agency Investment Policy

September 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4,[2] notice is hereby given that on August 25, 2016, The Depository Trust Company ("DTC"), Fixed Income Clearing Corporation ("FICC"), and National Securities Clearing Corporation ("NSCC", and together with DTC and FICC, the "Clearing Agencies") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Clearing Agencies. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adopt the Clearing Agency Investment Policy, which governs the investment of funds of the Clearing Agencies, as described below. This proposed rule change does not require any changes to the Rules & Procedures of NSCC ("NSCC Rules"), the DTC Rules, By-laws and Organizational Certificate ("DTC Rules"), the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBSD Rules") or the Rulebook of the Government Securities Division of FICC ("GSD Rules").[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies have adopted the Clearing Agency Investment Policy to govern the management, custody, and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,[4] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules, as described below. Investment of these funds was previously governed by the investment policy of the parent company of the Clearing Agencies, The Depository Trust & Clearing Corporation ("DTCC"). The Clearing Agency Investment Policy would include a glossary of key terms, the roles and responsibilities of DTCC staff in administering the Clearing Agency Investment Policy, guiding principles for investments, sources of investable funds, allowable investments of those funds, limitations on such investments, authority required for those investments and authority required to exceed established investment limits, as described below.

Governance and Responsibilities

The Clearing Agency Investment Policy would be co-owned by DTCC's Treasury group ("Treasury")[5] and the Counterparty Credit Risk team ("CCR") within DTCC's Financial Risk

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein are defined in the NSCC Rules, DTC Rules, MBSD Rules or GSD Rules, as applicable, *available at http://dtcc.com/legal/rules-and-procedures.*

[4] The NSCC and FICC Clearing Funds, and the DTC Participants Fund are described further in the rules of each of the Clearing Agencies. *See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules. *Supra,* note 3.

[5] Treasury is a part of the DTCC Finance Department and is responsible for the safeguarding, investment and disbursement of funds on behalf of the Clearing Agencies and in accordance with the principles outlined in the Clearing Agency Investment Policy.

Management group.[6] Additionally, the Clearing Agency Investment Policy would be reviewed annually and material changes would be required to be approved by the Board of Directors of each of NSCC, DTC and FICC (the "Boards"), or such other committee to which such authority may be delegated by the Boards from time to time. Future changes to the Clearing Agency Investment Policy would be subject to a subsequent rule filing and approval by the Commission.

Treasury would be responsible for identifying potential counterparties to investment transactions, establishing and managing investment relationships with approved investment counterparties, and making and monitoring all investment transactions with respect to the Clearing Agencies. Additionally, Treasury would be responsible for managing, monitoring and internal reporting of investment capacity utilization relative to established aggregate investment limits.[7]

CCR would be responsible for conducting a credit review of any potential counterparty, updating those reviews on a quarterly basis and establishing the investment limit for each counterparty approved by CCR. In conducting a credit review, CCR would evaluate the creditworthiness of counterparties based on a number of factors, including the credit ratings provided by external credit rating agencies. Counterparties generally would be required to meet a minimum external credit rating set forth in the Clearing Agency Investment Policy; however, CCR would be permitted to grant an exception to the minimum external credit rating requirement for a particular counterparty where CCR concludes that approving exposures to that counterparty would serve a valid business or investment purposes [sic] of the Clearing Agencies and the risk of loss or default to the Clearing Agencies is assessed as minimal. CCR could grant an exception on the foregoing basis based on an assessment of the counterparty's capitalization levels, liquidity resources, earnings trends and any other relevant information, and any such exception would be approved by a Managing Director in DTCC's Financial Risk Management group in accordance with the Clearing Fund [sic] Investment Policy.

Clearing Agency Investment Policy Overview

The Clearing Agency Investment Policy would identify permitted investments and the parameters of, and limitations on, each type of investment. In general, assets would be required to be held by regulated and creditworthy financial institution counterparties and invested in specified types of financial instruments. Permitted financial investments may include, for example, deposits with banks, including the Federal Reserve Bank of New York ("FRBNY"), collateralized reverse-repurchase agreements, direct obligations of the U.S. government, money-market mutual funds and high-grade corporate debt.[8] Additionally, the Clearing Agencies would, pursuant to the Clearing Agency Investment Policy, be permitted to use general corporate funds, and only such funds, to enter into hedge transactions to manage certain corporate exposures, such as interest rate or foreign currency risk; hedge transactions would not be permitted to be engaged in for speculative purposes.

The Clearing Agency Investment Policy would set forth guiding principles for the investment of funds, which include adherence to a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk. The guiding principles would also mandate the segregation and separation of deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, so that such amounts are not commingled with each other or with other funds held by the Clearing Agencies. The guiding principles would also address the process for evaluating the credit ratings of counterparties and setting investment limits, which would be evaluated, reviewed and approved quarterly by CCR. Finally, the guiding principles would make clear that risk of investment loss is addressed by the rules of each of the Clearing Agencies.

Funds invested pursuant to the Clearing Agency Investment Policy would include (i) cash deposits to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund, (ii) general corporate funds of each of the Clearing Agencies, (iii) NSCC's prefunded default liquidity funds raised from the private placement of unsecured debt,[9] (iv) amounts deposited with NSCC by its participants to meet Rule 15c3–3, promulgated under the Act as part of its fully-paid-for service,[10] (v) corporate action payments or principal and interest payments on Securities credited to the Accounts of DTC Participants that are received by DTC too late in the day or missing information needed for same-day allocation,[11] (vi) funds collected from DTC Participants through net funds settlement and held by DTC to cover 130% of the market value of "short positions,"[12] and (vii) cash debited from Netting Members of FICC's Government Securities Division to satisfy such Members' mark-to-market deficits on forward settling transactions.[13]

Investments in collateralized reverse repurchase agreements would be secured by debt obligations of the U.S. Government or Agencies guaranteed by the U.S. Government, or by mortgage pass-through obligations issued by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. Collateral posted by a counterparty to a reverse repurchase agreement (whether securities or a combination of securities and cash) would be required to have a market value equal to 102% or greater of the cash invested. Investments would also be permitted in money market mutual funds that have a credit rating from one or more recognized rating agencies. All permitted investments would be short term and readily accessible for liquidity, should the need arise, minimizing market risk.

Finally, the Clearing Agency Investment Policy would identify those individuals who may authorize certain investments, the establishment of investment relationships with approved counterparties, the execution of investment transactions with certain maturities, and requests to exceed investment limits for any counterparty or any investment type. Requests to exceed counterparty limits would be capped at a certain percent of the respective limits, as set forth in the Clearing Agency Investment Policy.

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[6] Among other responsibilities, DTCC's Financial Risk Management group (formerly known as DTCC's "Enterprise Risk Management" group) is generally responsible for the systems and processes designed to identify and manage credit, market and liquidity risks to the Clearing Agencies.

[7] All investments are subject to limits set by type of allowable investment and by counterparty. Investment limits are set at an aggregate DTCC-wide level and would apply to investments made by any of DTCC and each of its subsidiaries, including each of the Clearing Agencies.

[8] Only general corporate funds of a Clearing Agency would be permitted to be invested in high-grade corporate debt.

[9] *See* Securities Exchange Act Release No. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (File No. SR–NSCC–2015–802).

[10] 17 CFR 240.15c3–3; *see supra,* note 3.

[11] *See supra,* note 3.

[12] In this context, "short positions" refer to Securities that have been deposited by, and credited to the Account of, a DTC Participant, pending re-registration into the name of Cede & Co., the DTC nominee, which are nevertheless permitted to be delivered to another DTC Participant; this 130% charge is held by DTC until the Securities are re-registered. *See supra,* note 3.

[13] *See supra,* note 3.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, among other things, that the Clearing Agencies' respective rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible, and, in general, to protect investors and the public interest.[14]

The investment guidelines and governance procedures set forth in the Clearing Agency Investment Policy are designed to safeguard assets and to facilitate access to these assets, as needed, without delay, because certain assets that would be invested pursuant to the Clearing Agency Investment Policy constitute key liquidity resources of the Clearing Agencies. As such, these assets should be readily available to facilitate end-of-day settlement, including in the event of a member default, and to cover potential losses due to such an event. Therefore, the protections that would be afforded these assets under the Clearing Agency Investment Policy, which include, for example, following a prudent and conservative investment philosophy that places highest priority on maximizing liquidity and risk avoidance, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds related thereto, all in furtherance of protecting investors and the public interest, in compliance with Section 17A(b)(3)(F) of the Act.[15]

Rule 17Ad–22(d)(3), promulgated under the Act, requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them and to invest assets in instruments with minimal credit, market and liquidity risks.[16] As stated above, the Clearing Agency Investment Policy follows a prudent and conservative investment philosophy, placing the highest priority on maximizing liquidity and avoiding risk of loss, by requiring the segregation of funds of each Clearing Agency and of types of funds of each Clearing Agency, using external credit ratings in the evaluation of counterparties, and establishing counterparty investment limits by counterparty as well as investment type. Further, by requiring that each Clearing Agency invest its assets in instruments with minimal credit, market and liquidity risks, the Clearing Agency Investment Policy complies with the requirements of Rule 17Ad–22(d)(3), promulgated under the Act.[17]

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agency [sic] believes that the Clearing Agency Investment Policy would not have any impact, or impose any burden, on competition because the proposed rule change would (1) apply equally to the Clearing Fund or Participants Fund deposits, as applicable, of each member of the respective Clearing Agencies and (2) establish a uniform policy at the Clearing Agencies.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–007, SR–FICC–2016–005, or SR–NSCC–2016–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–007, SR–FICC–2016–005, or SR–NSCC–2016–003. One of these file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of each of the Clearing Agencies and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–007, SR–FICC–2016–005, or SR–NSCC–2016–003 and should be submitted on or before October 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–21910 Filed 9–12–16; 8:45 am]

BILLING CODE 8011–01–P

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[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] *Id.*

[16] 17 CFR 240.17Ad–22(d)(3).

[17] *Id.*

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9711]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a Working Paper prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The public meeting will take place on Tuesday, October 25, 2016, from 2 p.m. until 4 p.m. EDT. This is not a meeting of the full Advisory Committee.

The UNCITRAL Secretariat has revised draft provisions on electronic transferable records, which are presented in the form of a model law, for discussion during the next meeting of UNCITRAL's Working Group IV, which will meet October 31–November 4, 2016. The Working Paper, which will be numbered WP.139 and will include WP.139/Add.1 and WP.139/Add.2, will be available at *http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.*

The purpose of the public meeting is to obtain the views of concerned stakeholders on matters that might be addressed at the upcoming Experts' Group meeting. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at *coffeems@state.gov.*

TIME AND PLACE: The meeting will take place on October 25, 2016, from 2 p.m. until 4 p.m. EDT in Room 356, South Building, State Department Annex 4A, Washington, DC 20037. Participants should plan to arrive at the Navy Hill gate on the west side of 23rd Street NW. at the intersection of 23rd Street NW. and D Street NW. by 1:30 p.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

PUBLIC PARTICIPATION: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than October 18, 2016. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Dated: September 1, 2016.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2016–21979 Filed 9–12–16; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 9712]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on the Extension of the Cape Town Convention to Agricultural, Construction, and Mining Equipment

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss upcoming negotiations in UNIDROIT (the International Institute for the Unification of Private Law) to develop a new Protocol to the Cape Town Convention on International Interests in Mobile Equipment. The public meeting will take place on Tuesday, October 25, 2016, from 10:00 a.m. until 1:00 p.m. EDT. This is not a meeting of the full Advisory Committee.

The Cape Town Convention provides an international framework for the creation, registration, and enforcement of security interests in mobile equipment; separate Protocols are needed to apply the framework to specific types of equipment. The United States is a party to the Convention and to the first Protocol, which covers aircraft. UNIDROIT is now developing a new Protocol that will extend the Convention to cover agricultural, construction, and mining equipment. An UNIDROIT Study Group has developed a draft of the new Protocol that will serve as the basis for the negotiations in the Committee of Governmental Experts starting in March 2017. Documents for this project are available at *http://www.unidroit.org/work-in-progress-studies/current-studies/mac-protocol.*

The purpose of the public meeting is to obtain the views of concerned stakeholders on the draft Protocol being developed by UNIDROIT. Those who cannot attend but wish to comment are welcome to do so by email to Tim Schnabel at *SchnabelTR@state.gov.*

TIME AND PLACE: The meeting will take place from 10:00 a.m. until 1:00 p.m. on October 25, 2016, in room 6421, Harry S Truman Building, 2201 C Street NW., Washington, DC 20520. Participants should plan to arrive at the C Street entrance by 9:30 a.m. for visitor screening and will be escorted to the conference room. If you are unable to attend in person and would like to participate from a remote location, teleconferencing will be available.

PUBLIC PARTICIPATION: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than October 17, 2016. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information. We ask that each person who intends to participate by telephone notify us directly so that we may ensure that we have adequate dial-in capacity.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Dated: August 31, 2016.

Timothy R. Schnabel,

Attorney-Adviser, Office of Private International Law, Office of Legal Adviser, Department of State.

[FR Doc. 2016–21980 Filed 9–12–16; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 385X); Docket No. AB 1246X]

Norfolk Southern Railway Company—Abandonment Exemption—in Kalamazoo, Mich.; and Grand Elk Railroad, L.L.C.—Discontinuance Exemption—in Kalamazoo, Mich.

Norfolk Southern Railway Company (NSR) and Grand Elk Railroad, L.L.C. (GDLK) (collectively, applicants), have jointly filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments and Discontinuances of Service* for NSR to abandon, and for GDLK to discontinue service over, an approximately 0.1-mile rail line, between mileposts IJ 44.6 and IJ 44.7, in Kalamazoo, Mich. (the Line). The Line traverses United States Postal Service Zip Codes 49007 and 49001.

Applicants have certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line that would have to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on October 13, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 23, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 3, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 16, 2016. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by September 13, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: September 8, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–21986 Filed 9–12–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations at Tucson International Airport, Tucson, Pima County, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 3 acres of airport property at Tucson International Airport, Tucson, Pima County, Arizona, from all conditions contained in the Grant Assurances since the parcel of land is not needed for airport purposes. The property will be sold for its fair market value and the proceeds used for airport purposes. The redevelopment of the land for roadway enhancements to property owned by the U. S. Air Force represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed to the FAA at the following address: Tony Garcia, Airports Compliance Program Manager, Federal Aviation Administration, Airports Division, **Federal Register** Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed to Mr. Eric Roudebush, Director of Environmental Services, Tucson Airport Authority, 7005 South Plumer Avenue, Tucson, Arizona 85756.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the

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[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

Tucson Airport Authority requested a release from the conditions contained in the Grant Agreement Assurances for approximately 3 acres of airport land at Tucson International Airport. The property is located south of the airport on the southeast corner of the intersection of South Raytheon Parkway and the abandoned East Hughes Access Road. The area is mostly undeveloped arid land consisting of desert vegetation. The Airport Authority requested approval to sell the small parcel because the land is not needed for airport purposes presently or in the future. The sale price will be based on its appraised market value and the sale proceeds will be used for airport purposes. The property will be developed with roadway enhancements serving the adjacent U.S. Air Force property that will represent a compatible use and not interfere with airport operations. The mutual benefits will serve the interests of civil aviation.

Issued in Hawthorne, California on September 2, 2016.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2016–21936 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Fourth Meeting of SC–222 AMS(R)S

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Twenty Fourth Meeting of the SC–222 AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Fourth Meeting of SC–222 AMS(R)S.

DATES: The meeting will be held October 5–6, 2016, 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at: 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen at *jiversen@rtca.org* or (202) 330–0662, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Fourth Meeting of SC–222 AMS(R)S. The agenda will include the following:

Wednesday & Thursday, October 5–6, 2016 9 a.m.–5 p.m.

Welcome, Introductions, Administrative Remarks by Special Committee Leadership

- Designated Federal Official (DFO): Mr. David Robinson
- Chair RTCA–SC222: Dr. Chuck LaBerge, LaBerge Engineering
- Chair EUROCAE WG–82: Dr. Armin Schlereth, DFS

Agenda Overview

1. Review/Approve prior Plenary meeting Summary—(action item status)
2. Brief Status of Related Efforts (as necessary)
3. Detailed MASPS OC/FRAC Review INMARSAT
4. Detailed MOPS OC/FRAC Review HONEYWELL
5. Establish Agenda, Date and Place for next plenary meetings (as needed)
6. Review of Meeting summary report
7. Adjourn—Plenary meeting

12:00 Lunch both days

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 8, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–21943 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Research, Engineering & Development Advisory Committee meeting.

DATES: The meeting will be held on October 6, 2016—9:00 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Round Room (10th Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Chinita A. Roundtree-Coleman at (609) 485–7149 or Web site at *chinita.roundtree-coleman@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Research, Engineering and Development (RE&D) Advisory Committee. The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to attend the meeting, present statements, or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on September 6, 2016.

Chinita A. Roundtree-Coleman,

Computer Specialist.

[FR Doc. 2016–21967 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request for a Land Release of a 6.1 Acre Non-Contiguous Airport Owned Parcel Near the Long Island Macarthur Airport, New York. The Parcel Is Located at 1612 Coates Avenue, Holbrook, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comment.

SUMMARY: The FAA proposes to rule and invite public comment for a land release of a 6.1 acre airport owned parcel, not

contiguous with the airport, located at 1612 Coates Avenue, Holbrook, NY.

DATES: Comments must be received on or before October 13, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the following address: Robert Schneider, Deputy Commissioner, Long Island MacArthur Airport, 100 Arrival Avenue, Suite 100, Ronkonkoma, New York 11779, (631) 647–3300, and at the FAA New York Airports District Office: Evelyn Martinez, Manager, New York Airports District Office, 1 Aviation Plaza, Jamaica, NY 11434, (718) 995–5771.

FOR FURTHER INFORMATION CONTACT: Jose Moreno, Community Planner, New York Airports District Office, location listed above. (718) 995–5775.

The request for a Land Release of a parcel located at 1612 Coates Avenue, Holbrook, NY, may be reviewed in person at the New York Airports District Office located at 159–30 Rockaway Blvd., Suite 111, Jamaica, NY 11434.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request for a Land Release of a 6.1 acre airport owned parcel located at 1612 Coates Avenue, NY, under the provisions of 49 U.S.C. 47125(a). Based on a full review, the FAA determined that the Land Release request for the parcel in question Avenue parcel, submitted by the Town of Islip on behalf of the Long Island MacArthur Airport, met the procedural requirements.

The Town of Islip requested a Land Release of an airport owned parcel, not contiguous to the airport and located at 1612 Coates Avenue, Holbrook, NY. The airport has determined that the parcel is not suitable for aeronautical activity and it is no longer needed for aeronautical operations. The revenue generated by the sale will be used for airport purposes.

The property has been under Airport ownership since 1989 and it is no longer needed for aviation purposes. There exits private sector interest to develop the property in accordance with current zoning. Such development would be consistent with the surrounding area and interest in residential development.

Transferring the property to the private sector and allowing private sector investment would be of benefit to the Town of Islip, the airport, and the surrounding area by providing up to nine single family homes in a residential area with high demand. The land release would be contingent on deed restrictions for the new residential units to ensure the interest of the airport are considered with any new development consistent with Order 5190.6B Ch. 22. All proceeds generated from the sale of the property must be used exclusively by the airport in accordance with 49 U.S.C. 47107(b) and the FAA's policy on revenue use. Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed Land Release application for an airport owned parcel. All comments will be considered by the FAA to the extent practicable.

Issued in Jamaica, New York, August 31, 2016.

Evelyn Martinez,

Manager, New York Airports District Office.

[FR Doc. 2016–21968 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Grant Assurance Obligations at Bob Hope Airport, Burbank, Los Angeles County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 1.5 acres of airport property at Bob Hope Airport, Burbank, Los Angeles County, California, from all conditions contained in the Grant Assurances since the parcel of land is not needed for airport purposes. The property will be sold for its fair market value and the proceeds used for airport purposes. The redevelopment of the land for commercial purposes represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Tony Garcia, Airports Compliance Program Manager, Federal Aviation Administration, Airports Division, **Federal Register** Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. John T. Hatanaka, Senior Deputy Executive Director, Burbank-Glendale-Pasadena Airport Authority, 2627 Hollywood Way, Burbank, CA 91505.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

Burbank-Glendale-Pasadena Airport Authority requested a release from the conditions contained in the Grant Assurance obligations for approximately 1.5 acres of airport land at Bob Hope Airport. The property served as a parking lot and is located outside the airport boundary on the northwest side of the airport, east of Kenwood Street, and southwest of San Fernando Boulevard. The Airport Authority requested approval to sell the small parcel because the land is not needed for airport purposes presently or in the future. The sale price will be based on its appraised market value and the sale proceeds will be used for airport purposes. The property will be developed for commercial purposes, along with privately owned property to the south, that will represent a compatible use that will not interfere with airport operations. The interests of civil aviation will be appropriately served by the release.

Issued in Hawthorne, California on September 1, 2016.

Brian Armstrong,

Manager, Safety and Standards, Airports Division, Western-Pacific Region.

[FR Doc. 2016–21939 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on I–35 Improvements From Rundberg Lane to US 290 East in Austin, Travis County, Texas

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT), Texas Department of Transportation (TxDOT).

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies

that are final within the meaning of 23 U.S.C. 139(l)(1). The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014 and executed by FHWA and TxDOT. The actions relate to a proposed highway project, I–35 Improvements from Rundberg Lane to US 290 East in Austin, Travis County, in the State of Texas. Those actions grant licenses, permits, and approvals for the project. Under MAP–21 section 1319, TxDOT has issued a Finding of No Significant Impact for this action.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 9, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Swonke, P.G., Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: I–35 Improvements from Rundberg Lane to US 290 East in Austin, Travis County. The project is approximately 1.6 miles in length on US 183 and approximately 2.35 miles in length on I–35, would require approximately 7 acres of additional right-of-way, and would provide direct connectors (flyovers) between I–35 southbound to US 183 southbound; US 183 northbound to I–35 northbound; and I–35 southbound to US 183 northbound. The project will also add lanes to the I–35 frontage road in both directions to bypass the St. Johns Avenue signalized intersection; replace the existing St. Johns Avenue bridge over I–35 to provide the required vertical clearance; provide frontage road U-turns for the northbound and southbound directions at St. Johns Avenue; modify the I–35 northbound to US 183 northbound flyover; and provide bicycle and pedestrian facilities along the frontage roads.

The actions by TxDOT and the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) issued on August 1, 2016, and in other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the addresses provided above. The TxDOT EA and FONSI can be viewed and downloaded from the project Web site at *www.My35.org/Capital* or by visiting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 31, 2016.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2016–21406 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0118; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT)

ACTION: Grant of petition.

SUMMARY: BMW of North America, LLC, (BMW) a subsidiary of BMW AG in Munich, Germany, has determined that certain Model year (MY) 2015 BMW model X5 xDrive35i and model X5 xDrive35d multipurpose passenger vehicles (MPV) do not fully comply with paragraph S4.3.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* BMW filed a report dated October 22, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BMW then petitioned NHTSA under 49 CFR part 556 requesting a

decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Stu Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5287, facsimile (202) 366–7002.

SUPPLEMENTARY INFORMATION:

I. BMW's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of BMW's petition was published, with a 30-day public comment period, on April 3, 2015 in the **Federal Register** (80 FR 18294). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number "NHTSA–2014–0118."

II. Vehicles Involved: Affected are approximately 68 MY 2015 BMW model X5 xDrive35i and model X5 xDrive35d MPVs manufactured between October 3, 2014 through October 7, 2014.

III. Noncompliance: BMW explains that the vehicle certification labels required by 49 CFR part 567, and some of the tire information labels required by FMVSS No. 110, affixed to the subject vehicles show that the vehicles were originally equipped with 18-inch tires and rims. The vehicles were actually originally equipped with 19-inch tires and rims. BMW believes that the noncompliance is that the certification label required by 49 CFR part 567, and in some cases the tire information labels required by FMVSS No. 110, do not list rim information for the tires installed on the vehicles as original equipment as required by paragraph S4.3.3 of FMVSS No. 110.

Rule Text: Paragraph S4.3.3 of FMVSS No. 110 requires in pertinent part:

> S4.3.3 *Additional labeling information for vehicles other than passenger cars.* Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter . . .

V. Summary of BMW's Analyses: BMW stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

In the case of the subject vehicles with an incorrect Part 567 certification label but a correct FMVSS No. 110 tire information label, BMW states that when a person checks or adjusts the inflation of a tire and uses this (correct) FMVSS No. 110 tire information label, the person will have the correct inflation pressure available from that label. If, however, the person only looks at the certification label, or both the certification and tire information labels, BMW states that the person may then become unsure of what tires have been installed on the vehicle. Should this occur, BMW states that a number of information sources and services are available which can be used to determine the correct tire size and recommended cold inflation pressure. BMW states that these information sources include the tires installed on the vehicle which have the tire size information contained on their sidewalls, the vehicle's Owner's Manual which contains information pertaining to the various tire sizes and tire pressure for use on the affected vehicles, and BMW's Roadside Assistance™ program which is available 24 hours/day and provides representatives who have information on all available tire sizes and specifications for a given model and model year of BMW. BMW states its belief that all of the above listed sources would lead the driver to obtaining the correct recommended cold inflation pressure when attempting to inflate the tires mounted on their vehicle.

For the subject vehicles containing both incorrect 49 CFR part 567 certification labels' and incorrect FMVSS No. 110 tire information labels BMW states that the driver can use the labeling on the sidewall of the installed tires, the vehicle's owner's manual, and BMW Roadside Assistance™ to determine the recommended cold inflation pressure for the tires installed on their vehicle.

BMW also maintains that if a driver were to use the cold inflation pressure shown on the incorrect labels for the 18-inch tires when inflating the 19-inch tires, that pressure would be sufficient to support vehicle loading. Their calculations using the MY 2015 X5 xDrive35i for example show that the determined load rating for two 19-inch tires inflated to the pressure meant for 18-inch tires is 1,572 kg. Because the front gross axle weight rating (GAWR) is 1,279 kg, BMW concludes that the 19-inch tires would be adequately inflated. BMW also included calculations to demonstrate that the information on the certification labels is correct for the 18-inch tires mounted on the subject vehicles.

BMW states that BMW Customer Relations have not received any contact from vehicle owners regarding this issue and, therefore, are unaware that any vehicle owner has encountered this issue in the field. They state that they are also unaware of any accident or injuries that have occurred as a result of this noncompliance.

BMW has additionally informed NHTSA that it has corrected the subject noncompliance.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt BMW from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: The 68 affected vehicles were all originally equipped with 19 inch tires but the Part 567 certification label on these vehicles incorrectly only lists rim type and size information for an 18 inch tire violating the requirements of FMVSS No. 110 section S4.3.3., which effectively requires that the rim size on the label be appropriate for the tire size installed on the vehicle as original equipment. Additionally, for some of the 68 vehicles, the FMVSS No.110 required vehicle placard lists information for an 18 inch tire, including tire size and recommended inflation pressure, when a 19 inch tire was originally installed on the vehicle violating FMVSS No.110 sections S4.3(c) and (d). Section S4.3(c) requires that the placard identify the manufacturer recommended cold tire inflation pressure for the fitted tires, and section S4.3(d) requires the tire size designation for the tires installed at the time of the first purchase.

For all 68 vehicles where the rim type and size is not provided for the originally installed 19 inch tire, the agency believes the vehicle owners will not encounter any safety problems if their rims need to be replaced. First, in addition to the rim size information that was inadvertently not included on the certification label required by 49 CFR part 567, FMVSS No. 110 requires that the rim size, along with other information, be stamped on the rim itself. Also, the tire size stamped on the sidewall of the tire indicates the corresponding rim diameter.

Furthermore, BMW mentioned that their owner's manual contains tire information and that vehicle owners can contact BMW Roadside Assistance, BMW Assist, and BMW Customer Relations for additional assistance.

For the vehicles where the FMVSS No. 110 required vehicle placard lists information for an 18 inch tire, including tire size and recommended inflation pressure, when a 19 inch tire was originally installed on the vehicle, a different analysis needs to be considered. FMVSS No. 110 requires that the original tires installed on a vehicle and the tires listed on the vehicle placard be the same size, and that the tires at the manufacturer recommended inflation pressure be appropriate for the designed vehicle maximum load conditions. If a customer were to look at the vehicle placard to determine recommended inflation pressure values they would see values intended for the 18 inch tire and not the 19 inch tire. If that customer did not notice that their vehicle had 19 inch wheels installed they may use the 18 inch tire inflation values which are less than required for the 19 inch tires. If this were the case, calculations show that the 19 inch tire load carrying capacities at the 18 inch tire delineated pressures (with tire load capacity reduced/divided by a 1.1 reduction factor as required in FMVSS No. 110 for passenger car tires used on multi-purpose passenger vehicles) is appropriate for the front and rear specified GAWR's in all affected vehicle models except for the "worst case" model with the heaviest GAWR which is the axle rating assigned by BMW to the X5xDrive35i 7-seater rear axle. For a 19 inch tire at an 18 inch recommended inflation pressure of 33 PSI and 41 PSI front and rear axles respectively, a front tire load rating is 810 kg, then, with a 10% reduction factor results in a value of 736 kg or a total of 1,472 kg front axle load carrying capacity. This value exceeds all four front GAWR values provided by BMW for the four models of vehicles with the largest axle rating value of 1334 kg. At 41 psi, the per tire load rating equates to 950 kg, then with a 10% reduction factor becomes 864 kg per tire or 1727 kg rear axle load carrying capacity. The 1727 kg value is larger than rear axle GAWR values provided by BMW on three models, but not on the fourth model, the 7-seat X5 vehicle which has a rear GAWR of 1742 kg. For this model at full load capacity, the tires technically, are undersized for the rear axle by 15 kg (1742kg–1727 kg) or approximately 33 pounds divided by the two tires resulting in approximately 15 pounds per tire. In follow-up discussions with BMW, they indicated that only five of the 68 non-compliant vehicles are the 7-seat model, and agreed that for those five vehicles new corrected FMVSS No. 110 vehicle placard labels will be sent to the owners. On 08/16/2016, BMW confirmed that the respective five owners were contacted and new vehicle placards were mailed out.

NHTSA's Decision: Considering the above analysis, the fact that BMW stated they have no reports of accidents or injuries due to this noncompliance, and that BMW is providing corrected replacement labels to the five owners of the 7-seat model X5 which has tire overload potential, NHTSA finds that BMW has met its burden of persuasion that the subject FMVSS No. 110 rim and tire size labeling noncompliances on the subject vehicles are inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted and BMW is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that BMW no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–21978 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0064, Notice No. 2016–8]

Hazardous Materials: International Regulations for the Safe Transport of Radioactive Material (SSR–6); Draft Revision Available for Comment

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; document availability and request for comments.

SUMMARY: PHMSA seeks public comment on a draft revision of the International Atomic Energy Agency's (IAEA) "Regulations for the Safe Transport of Radioactive Material" (SSR–6), which is scheduled for publication in 2018. PHMSA and the U.S. Nuclear Regulatory Commission (NRC) will submit comments jointly to the IAEA regarding the draft document. PHMSA thereby requests public input to assist in U.S. comment development.

DATES: Comments must be received on or before October 28, 2016. Comments received after this date will be considered if it is practical to do so; however, we are only able to assure consideration for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2016–0064 for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement at *http://www.dot.gov/privacy*.

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (*see* **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Boyle, Engineering and Research Division, (202) 366–4545, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The IAEA works with its Member States and multiple partners worldwide to promote safe, secure, and peaceful nuclear technologies. The IAEA established and further maintains "Regulations for the Safe Transport of Radioactive Material" (SSR–6), which is an international standard promoting the safe and secure transportation of radioactive material. The IAEA periodically reviews and, as deemed appropriate, revises "Regulations for the Safe Transport of Radioactive Material" to reflect new information and accumulated experience. The DOT is the U.S. competent authority before the IAEA for radioactive material transportation matters. The NRC provides technical support to the DOT in this regard, particularly pertaining to Type B and fissile transportation packages.

The IAEA has released, for a 120-day Member State review, a draft revision of SSR–6 intended for publication in 2018. To assure opportunity for public involvement in the international regulatory development process, PHMSA requests input from the public on the proposed revisions to SSR–6 and solicits comment only on the changes made between the published 2012 edition and the draft 2018 edition. The public docket for this notice contains a redline/strikeout version of the 2018 draft showing the changes from the 2012 version.

Any comments made should refer to the relevant paragraph number in the draft 2018 edition and, when appropriate, include proposed alternative text. Please note that to date, PHMSA has harmonized the U.S. domestic hazardous materials regulations in 49 CFR with the 2009 edition of the IAEA regulations, as revised in 2014 [Docket No. PHMSA–2009–0063 (HM–250)]. The NRC is currently developing a rulemaking to harmonize with the 2012 edition of SSR–6. PHMSA may also develop a subsequent rulemaking to harmonize with the 2012 edition of SSR–6, but we are not currently considering adoption of the 2018 amendments. However, both the NRC and DOT will consider subsequent domestic compatibility rulemakings after IAEA's final publication of the 2018 revised SSR–6.

II. Public Participation

The **ADDRESSES** section of this notice specifies methods and instructions for submitting comments.

Comments must be submitted in writing (Microsoft Word file is the preferred format for electronic submissions) and should include the following:

- Name;
- Address;
- Relevant paragraph number in the document being reviewed; and
- When appropriate, proposed alternative text.

Commenters may also provide contact information, such as a telephone number and/or email address.

PHMSA and the NRC will review the comments received and, based in part on the information received, will develop comments on the revised draft of SSR–6 to be submitted to the IAEA.

Issued in Washington, DC, on September 8, 2016.

William S. Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–21960 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The meeting will be held from 2:00 p.m. to 4:00 p.m. (EDT) on Friday, September 30, 2016 via conference call at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, September 23, 2016, Charles Wipperfurth, Deputy Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on September 7, 2016.

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2016–21915 Filed 9–12–16; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, "Real Estate Lending and Appraisals." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by October 13, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0190, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0190, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB approve the renewal of the collection of information set forth in this document.

Title: Real Estate Lending and Appraisals (12 CFR 34, 160, 164, 190).

OMB Control No.: 1557–0190.

Type of Review: Extension, without revision, of a currently approved collection.

Description: Twelve CFR parts 34 and 160 contain reporting and recordkeeping requirements. Twelve CFR part 34, subpart B (Adjustable-Rate Mortgages (ARM)), subpart E (Other Real Estate Owned (OREO)) and part 160 contain reporting requirements. Twelve CFR part 34, subpart C (Appraisal Requirements), subpart D (Real Estate Lending Standards), and parts 160 and 164 contain recordkeeping requirements. Twelve CFR 190.4(h) contains a disclosure requirement concerning Federally-related residential manufactured housing loans.

Twelve CFR part 34, subpart B, § 34.22(a) requires that for ARM loans, the loan documentation must specify an index or combination of indices to which changes in the interest rate will be linked. Sections 34.22(b) and 160.35(d)(3) provide notice procedures to be used when seeking to use an alternative index.

Twelve CFR 34.44 and 164.4 provide minimum standards for the performance of real estate appraisals, including the requirement that appraisals be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction.

Twelve CFR 34.62, 160.101, and the related appendices require each institution to adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate or that are made for the purpose of financing permanent improvements to real estate. Real estate lending policies must be reviewed and approved by the institution's board of directors at least annually.

Twelve CFR 34.84 requires that, after holding any real estate acquired for future bank expansion for one year, a national bank must state, by resolution or other official action, its plans for the use of the property and make the resolution or other action available for inspection by examiners. Sections 34.85 and 160.172 require that national banks and Federal savings associations develop a prudent real estate collateral evaluation policy to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice. Section 34.86 requires that national banks notify the appropriate OCC supervisory office at least 30 days before making advances under a development or improvement plan for OREO if the total investment in the property will exceed 10 percent of the bank's capital and surplus.

Twelve CFR 190.4(h) requires that for Federally-related residential manufactured housing loans, a creditor must provide a debtor a notice of default 30 days prior to repossession, foreclosure, or acceleration.

Affected Public: Businesses or other for-profit.

Frequency of Response: On occasion.

Burden Estimates:

Estimated Number of Respondents: 1,023 national banks and 390 Federal savings associations.

Estimated Annual Burden: 94,512 burden hours.

Comments: On June 24, 2016, the OCC issued a 60-day notice soliciting comment on the collection, 81 FR 41373. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 2, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–21741 Filed 9–12–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 12, 2016.

FOR FURTHER INFORMATION CONTACT: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer

Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Wednesday, October 12, 2016, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769, TAP Office, 4050 Alpha Rd, Farmers Branch, TX 75244, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21949 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, October 13, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21951 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 19, 2016.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, October 19, 2016, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21947 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 4, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, October 4, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various special topics with IRS processes.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21946 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, October 26, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21945 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 26, 2016.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, October 26, 2016, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21948 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 20, 2016.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, October 20, 2016, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: September 6, 2016.

Theresa Singleton,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–21944 Filed 9–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Tuesday, Wednesday, and Thursday, September 27–29, 2016. The meeting on Tuesday will be conducted in Conference Room 730 at the Department of Veterans Affairs (VA) Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The meeting on Thursday will be conducted in Conference Room 428 at the Readjustment Counseling Service (RCS) Headquarters Offices located at 1717 H Street NW., Washington DC 20006. The agenda for these two days will begin at 8:00 a.m. and end at 4:30 p.m. The meeting on both days is open to the public.

The meeting on Wednesday will be conducted at two VA Vet Centers located in Alexandria, VA and Prince George County, MD. The latter meetings will include interviews with Veteran consumers and will be closed to the public. Portions of these visits are closed to the public in accordance with 5 U.S.C. 552b(c)(6). Exemption 6 permits to Committee to close those portions of a meeting that are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. During the closed sessions the Committee will discuss VA beneficiary and patient information in which there is a clear unwarranted invasion of the Veteran or beneficiary privacy.

The purpose of the Committee is to review the post-war readjustment needs of combat Veterans and to evaluate the availability and effectiveness of VA programs to meet Veterans' needs.

On September 27, the Committee will be briefed on current directions and priorities for serving the Nation's war Veterans. The Committee will also be briefed by the Principal Deputy Under Secretary for Health on new directions of care in Veterans Health Administration (VHA) and the coordination of VA healthcare with readjustment counseling.

The September 27 will also include briefings on the current activities of the Readjustment Counseling Service (RCS) Vet Centers to include the full scope of outreach and readjustment counseling services provided to combat Veterans, Service members and families. The briefing will focus on the coordination of Vet Center services with VHA health care, mental health, and social work services. The Committee will also receive briefings from VHA mental health program officials focusing on the key role of mental health services for the psychological, social, and economic readjustment of combat Veterans.

On September 28, Committee members will conduct onsite visits at two Vet Centers to meet with groups of Veteran consumers and with VHA service providers from the Vet Centers and the support VA medical facilities.

On September 29 the Committee will receive briefings from additional VHA program officials representing key programs of specific value for the post-war readjustment of Veterans, Service members and family members. The agenda for September 29 will conclude with a Committee strategic planning session for developing the observations and conclusions for the annual Committee Report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee before the meeting to Mr. Charles M. Flora, L.C.S.W–C., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Because the meeting will be in a Government building, please provide valid photo identification for check-in. Please allow 30 minutes before the meeting for the check-in process. If you plan to attend or have questions concerning the meeting, please contact Mr. Flora at (202) 461–6525 or by email at *charles.flora@va.gov.*

Dated: September 8, 2016.

LaTonya L. Small,

Advisory Committee Management Office.

[FR Doc. 2016–21926 Filed 9–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Federal Advisory Committee on Prosthetics and Special-Disabilities Programs will be held on October 4–5, 2016, in Room 630 at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The meeting will convene at 8:30 a.m. on both days, and will adjourn at 4:30 p.m. on October 4 and at 12 noon on October 5. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of VA on VA's prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special-disabilities programs, which are defined as any program administered by the Secretary to serve Veterans with spinal cord injuries, blindness or visual impairments, loss of extremities or loss of function, deafness or hearing impairment, and other serious incapacities in terms of daily life functions.

On October 4, the Committee will receive briefings on the National Veterans Sports Programs and Adaptive Sports Grants, Audiology & Speech Pathology, Rehabilitation Research and Development, Prosthetic and Sensory Aids, Blind Rehabilitation Services and Telemedicine. On October 5, the Committee members will receive Ethics Training, discuss administrative matters, and deliberate actions internal to the Committee.

No time will be allocated for receiving oral presentations from the public; however, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Judy Schafer, Ph.D., Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation and Prosthetic Services (10P4R), VA, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Judy.Schafer@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Therefore, you should allow an additional 30 minutes before the meeting begins. Any member of the public wishing to attend the meeting should contact Dr. Schafer at (202) 461–7315.

Dated: September 8, 2016.

LaTonya L. Small,

Advisory Committee Management Office.

[FR Doc. 2016–21965 Filed 9–12–16; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Inpatient MS–DRGs and SNF Medical Services; v3.19, Fiscal Year 2017 Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document updates the acute inpatient and the skilled nursing facility (SNF)/sub-acute inpatient facility charges. The updated charges are based on the 2017 Medicare severity diagnosis related groups (MS–DRG).

FOR FURTHER INFORMATION CONTACT: Romona Greene, Office of Community Care, Revenue Operations, Consolidated Patient Account Center (CPAC) Rates and Charges (10D1C), Veterans Health Administration (VHA), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2521. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Section 17.101 of Title 38 of the Code of Federal Regulations (CFR) sets forth the Department of Veterans Affairs (VA) medical regulations concerning "Reasonable Charges" for medical care or services provided or furnished by VA to a veteran: for a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract; for a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or, for a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance. The methodologies for establishing billed amounts for several types of charges are found in 38 CFR 17.101; however, this notice will only address the acute inpatient and the SNF/sub-acute inpatient facility charges.

Based on the methodologies set forth in 38 CFR 17.101(b), this notice updates the acute inpatient facility charges that were based on the 2016 MS–DRGs. Acute inpatient facility charges by MS–

DRGs are posted on the VHA Internet site, at *http://www.va.gov/CBO/apps/rates/index.asp,* under the "Reasonable Charges Data Tables" section, Inpatient Data Table, as Table A (v3.17). This Table A corresponds to the Table A referenced in 80 FR 57051, September 21, 2015. Table A referenced in this notice is v3.19, which provides updated charges based on the 2017 MS–DRGs, and it will replace Table A (v3.17) posted on the VHA Internet site.

Also, this document updates the SNF/sub-acute inpatient facility all-inclusive per diem charge using the methodologies set forth in 38 CFR 17.101(c) and this charge is adjusted by a geographic area factor that is based on the location where the care is provided. For the geographic area factors, see Table N, Acute Inpatient, and Table O, SNF, on the VHA Web site under the v3.18 link in the "Reasonable Charges Data Tables" section. Tables N and O are not being updated by this notice. The SNF/sub-acute inpatient facility per diem charge is posted on the VHA Internet site, at *http://www.va.gov/CBO/apps/rates/index.asp,* under the "Reasonable Charges Data Tables" section, Table B (v3.17). This Table B corresponds to the Table B referenced in 80 FR 57051, September 21, 2015. Table B referenced in this notice is v3.19, which provides an update to the all-inclusive nationwide SNF/sub-acute inpatient facility per diem charge and will replace Table B posted on the VHA Internet site.

The charges in this notice for acute inpatient and SNF/sub-acute inpatient facility services are effective October 1, 2016.

This notice is retaining the table designations used for acute inpatient facility charges by MS–DRGs, which is posted on the VHA Internet site, currently at *http://www.va.gov/CBO/apps/rates/index.asp,* under "Reasonable Charges Data Tables." This notice is also retaining the table designation used for SNF/sub-acute inpatient facility charges, which is also posted on the VHA Internet site. Accordingly, the tables identified as being updated by this notice correspond to the applicable tables referenced in 80 FR 57051, September 21, 2015.

The list of data sources presented in Supplementary Table 1 (v3.19) reflects the updated data sources used to establish the updated charges described in this notice, and will be posted on the VHA Internet site, at *http://www.va.gov/CBO/apps/rates/index.asp,* under the "Reasonable Charges Data Sources" section.

VHA has also updated the list of VA medical facility locations. As a reminder, in Supplementary Table 3, posted on the VHA Internet site, CPAC Rates and Charges and Billing, at *http://www.va.gov/CBO/apps/rates/index.asp,* under the VA Medical Facility Locations section, VHA set forth the list of VA medical facility locations, which includes the first three digits of their zip codes and provider-based/non-provider-based designations.

Consistent with VA's regulations, the updated data tables and supplementary tables containing the changes described in this notice will be posted on the VHA Internet site, at *http://www.va.gov/CBO/apps/rates/index.asp,* under the "CPAC Rates and Charges and Billing, Reasonable Charges Information" section.

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 6, 2016, for publication.

Dated: September 6, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–21959 Filed 9–12–16; 8:45 am]

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Part II

Department of Energy

10 CFR Part 431

Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2015–BT–STD–0016]

RIN 1904–AD59

Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 ("EPCA"), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including walk-in coolers and freezers. EPCA also requires the U.S. Department of Energy ("DOE") to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. DOE proposes prescribing energy conservation standards for certain categories of walk-in cooler and freezer refrigeration systems and plans to hold a public meeting to receive comment on these proposed standards along with their accompanying analyses.

DATES:

Meeting: DOE will hold a public meeting on September 29, 2016, from 10 a.m. to 2 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking ("NOPR") before and after the public meeting, but no later than November 14, 2016. See section VII, "Public Participation," for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section before October 13, 2016.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1A–104, 1000 Independence Avenue SW., Washington, DC 20585.

Instructions: Any comments submitted must identify the NOPR on Energy Conservation Standards for WICF refrigeration systems, and provide docket number EE–2015–BT–STD–0016 and/or regulatory information number (RIN) 1904–AD59. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: WICF2015STD0016@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–6636. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document ("Public Participation").

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before October 13, 2016. Please indicate in the "Subject" line of your email the title and Docket Number of this rulemaking notice.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly-available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=56.* This Web page contains a link to the docket for this proposed rule on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, "Public Participation," for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *walk-in_coolers_and_walk-in_freezers@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 586–6636 or by email: *walk-in_coolers_and_walk-in_freezers@EE.Doe.Gov.*

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I. Synopsis of the Proposed Rule

Title III, Part C[1] of the Energy Policy and Conservation Act of 1975 ("EPCA" or, in context, "the Act"), Public Law 94–163 (December 22, 1975), coupled with Section 441(a) Title IV of the National Energy Conservation Policy Act, Public Law 95–619 (November 9, 1978) (collectively codified at 42 U.S.C. 6311–6317), established the Energy Conservation Program for Certain Industrial Equipment.[2] The covered equipment includes certain walk-in cooler and freezer ("WICF" or "walk-in") refrigeration systems, including low-temperature dedicated condensing systems and both medium- and low-temperature unit coolers,[3] the subjects of this rulemaking.

Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for WICF refrigeration systems must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 in a significant conservation of energy that satisfies both of the above requirements. See 42 U.S.C. 6295(o)(3)(B).

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[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] In previous proceedings, most notably the June 2014 final rule, DOE used the terminology "multiplex condensing" (abbreviated "MC") to refer to the class of equipment represented by a unit cooler, which for purposes of testing and certification is rated as though it would be connected to a multiplex condensing system. In a separate test procedure NOPR, DOE has proposed to change the terminology to better reflect the equipment itself, which consists of a unit cooler sold without a condensing unit, and which can ultimately be used in either a multiplex condensing or dedicated condensing application. Accordingly, in this document, DOE has changed the class name from "multiplex condensing" to "unit cooler" and the class abbreviation from "MC" to "UC."

In accordance with these and other statutory provisions discussed in this document, DOE proposes to establish performance-based energy conservation standards for the aforementioned classes of WICF refrigeration systems that will

temperature, indoor and outdoor refrigeration systems. See 10 CFR 431.306(e) (as amended by 80 FR 69838 (November 12, 2015)). The proposed standards, which are expressed in terms of an annual walk-in energy factor (''AWEF'') for classes of walk-in refrigeration systems being considered in this rule, are shown in Table I–1. These proposed standards, if adopted,

into, the United States starting on the date three years after the publication of the final rule for this rulemaking. (For purposes of this analysis, that date is projected to fall on the day after December 31, 2019. This date is subject to change pending publication of the final rule in the **Federal Register**.)

TABLE I–1—PROPOSED ENERGY CONSERVATION STANDARDS FOR THE CONSIDERED EQUIPMENT CLASSES OF WICF REFRIGERATION SYSTEMS

Equipment class	Capacity (q_{net}) (Btu/h)	Minimum AWEF (Btu/W-h)
Unit Cooler—Low-Temperature	<15,500	$1.575 \times 10^{-5} \times q_{net} + 3.91$
	≥15,500	4.15
Unit Cooler—Medium Temperature	All	9.00
Dedicated Condensing System—Low-Temperature, Outdoor	<6,500	$6.522 \times 10^{-5} \times q_{net} + 2.73$
	≥6,500	3.15
Dedicated Condensing System—Low-Temperature, Indoor	<6,500	$9.091 \times 10^{-5} \times q_{net} + 1.81$
	≥6,500	2.40

*Where q_{net} is net capacity as determined in accordance with 10 CFR 431.304 and certified in accordance with 10 CFR part 429.

In various places in this document, DOE will use the following acronyms to denote the seven equipment classes of walk-in refrigeration systems that are subject to this rulemaking:

—DC.L.I. (dedicated condensing, low-temperature, indoor unit)
—DC.L.O (dedicated condensing, low-temperature, outdoor unit)
—UC.L. (unit cooler, low-temperature)
—UC.M. (unit cooler, medium-temperature)

For reference, DOE will use the following acronyms to denote the two equipment classes of walk-in refrigeration systems which are not subject to this rulemaking for which standards were established in the previous WICF rulemaking:

—DC.M.I (dedicated condensing, medium-temperature, indoor unit)
—DC.M.O (dedicated condensing, medium-temperature, outdoor unit)

A. Benefits and Costs to Consumers

Table I–2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of the considered WICF refrigeration systems (*i.e.* medium- and low-temperature unit coolers and dedicated condensing low-temperature systems), as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[4] DOE's analysis demonstrates that the projected average LCC savings are positive for all considered equipment classes, and the projected PBP is less than the average lifetime of the considered WICF refrigeration systems, which is estimated to be 11 years (see section IV.F).

TABLE I–2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF WICF REFRIGERATION SYSTEMS (TSL 3)

Equipment class	Application	Design path	Average life-cycle cost savings (2015$)	Simple payback period (years)
DC.L.I	Dedicated, Indoor	Condensing Unit Only*	$1,717	1.3
	Dedicated, Indoor	Field Paired**	1,820	1.5
	Dedicated, Indoor	Unit Cooler Only†	156	4.6
DC.L.O	Dedicated, Outdoor	Condensing Unit Only	3,148	2.1
	Dedicated, Outdoor	Field Paired	3,294	1.0
	Dedicated, Outdoor	Unit Cooler Only	324	4.3
UC.L	Multiplex	Unit Cooler Only	97	7.3
UC.M	Dedicated, Indoor	Unit Cooler Only	99	1.3
UC.M	Dedicated, Outdoor	Unit Cooler Only	96	1.8
UC.M	Multiplex	Unit Cooler Only	84	2.9

Note: DOE separately considers the impacts of unit cooler standards when the unit cooler is combined in an application with dedicated condensing equipment versus multiplex condensing equipment. Namely, DOE is examining the impacts of unit coolers that are combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O). DOE is not considering establishing standards for the latter, as they are covered by the 2014 final rule and were not vacated by the Fifth Circuit order.

*Condensing Unit Only (CU-Only): Condensing unit-only. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which a new condensing unit is installed to replace a failed condensing unit, but the existing unit cooler is not replaced. See section IV.F.1.b for more details.

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[4] The average LCC savings are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.9). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to baseline equipment (see section IV.C.1.a).

** Field Paired (FP): Field-paired unit cooler and condensing unit. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which both a new condensing unit and a new unit cooler are installed. See section IV.F.1.a for more details.

† Unit Cooler Only (UC-Only): Unit cooler only. This analysis evaluates standard levels applied to a unit cooler distributed in commerce without a designated companion condensing unit, either dedicated or multiplex, for a scenario in which a new unit cooler is installed to replace a failed unit cooler, but the existing condensing unit is not replaced. See section IV.F.1.c for more details.

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this NOPR.

B. Impact on Manufacturers

The industry net present value ("INPV") is the sum of the discounted cash-flows to the industry from the base year through the end of the analysis period (2016 to 2049). Using a real discount rate of 10.2 percent, DOE estimates that the INPV from the seven WICF refrigeration system equipment classes being analyzed is $99.7 million in 2015$. Under the proposed standards, DOE expects INPV may change approximately −14.8 percent to −4.4 percent, which corresponds to approximately −14.8 million and −4.4 million in 2015$. To bring equipment into compliance with the proposed standard in this NOPR, DOE expects the industry to incur $16.2 million in total conversion costs.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document.

C. National Benefits and Costs[5]

DOE's analyses indicate that the proposed energy conservation standards for the considered WICF refrigeration systems would save a significant amount of energy. Relative to the case without adopting the standards, the lifetime energy savings for the considered WICF refrigeration systems purchased in the 30-year period that begins in the anticipated year of compliance with the standards (2020–2049) amount to 0.90 quadrillion British thermal units (Btu), or quads.[6] This represents a savings of 24 percent relative to the energy use of these products in the case without the proposed standards in place (referred to as the "no-new-standards case").

The cumulative net present value ("NPV") of total consumer costs and savings of the proposed standards for the considered WICF refrigeration systems ranges from $1.8 billion (at a 7-percent discount rate) to $4.3 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for the considered WICF refrigeration systems purchased in 2020–2049.

In addition to these anticipated benefits, the proposed standards for the considered WICF refrigeration systems are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 54.4 million metric tons (Mt)[7] of carbon dioxide (CO_2), 31.7 thousand tons of sulfur dioxide (SO_2), 97.7 thousand tons of nitrogen oxides (NO_X), 232.1 thousand tons of methane (CH_4), 0.7 thousand tons of nitrous oxide (N_2O), and 0.1 tons of mercury (Hg).[8] The cumulative reduction in CO_2 emissions through 2030 amounts to 9.3 Mt, which is equivalent to the emissions resulting from the annual electricity use of 849 thousand homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the "Social Cost of Carbon", or SCC) developed by a Federal interagency Working Group.[9] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I–3), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.4 billion and $5.4 billion, with a value of $1.8 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates the present monetary value of the NO_X emissions reduction to be $0.08 billion at a 7-percent discount rate and $0.18 billion at a 3-percent discount rate.[10] DOE is still investigating the most appropriate economic estimates to use in valuing the reduction in methane and other emissions, and therefore did not include any values for those emissions in this rulemaking.

DOE notes that the Secretary has determined that the proposed standards are technologically feasible and economically justified. This conclusion is further supported by, but does not depend on, the benefits expected to accrue as a result of the anticipated decreased production of CO_2 emissions. As detailed in section V.D.1 of this document, the projected benefits from these proposed standards exceed the related costs, even ignoring the benefits from reduced CO_2 emissions. Consideration of the benefits of reduced emissions further underscores the Secretary's conclusion.

Table I–3 summarizes the economic benefits and costs expected to result from the proposed standards for the considered WICF refrigeration systems.

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[5] All monetary values in this document are expressed in 2015 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[6] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1.

[7] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[8] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[9] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[10] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.*, Order in Pending Case, 136 S.Ct. 999, 577 U.S. ___(2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.*, 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2011), the values would be nearly two-and-a-half times larger.

TABLE I–3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR WICF REFRIGERATION SYSTEMS (TSL 3) *

Category	Present value billion 2015$	Discount rate (percent)
Benefits		
Consumer Operating Cost Savings	2.2	7
	5.1	3
CO_2 Reduction Value ($12.4/t case) **	0.4	5
CO_2 Reduction Value ($40.6/t case) **	1.8	3
CO_2 Reduction Value ($63.2/t case) **	2.8	2.5
CO_2 Reduction Value ($118/t case) **	5.4	3
NO_X Reduction Value †	0.1	7
	0.2	3
Total Benefits ‡	4.0	7
	7.0	3
Costs		
Consumer Incremental Installed Costs	0.4	7
	0.8	3
Net Benefits		
Including CO_2 and NO_X Reduction Value ‡	3.6	7
	6.2	3

* This table presents the costs and benefits associated with WICF refrigeration systems shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the equipment purchased in 2020–2049. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2015$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger.

‡ Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.6/t case).

The benefits and costs of the proposed standards, for the considered WICF refrigeration systems sold in 2020–2049, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The national economic value of the benefits in reduced consumer operating costs, minus (2) the increase in equipment purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[11]

Although the values of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. The national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of purchasing the covered equipment. The national operating cost savings is measured for the lifetime of WICF refrigeration systems shipped in 2020–2049. The CO_2 reduction is a benefit that accrues globally due to decreased domestic energy consumption that is expected to result from this rule.[12] Like national operating cost savings, the amount of emissions reductions achieved as a result of the proposed standards is calculated based on the lifetime of WICF refrigeration systems shipped during that analysis period. Because CO_2 emissions have a very long residence time in the atmosphere, however, the SCC values reflect CO_2-emissions impacts that continue beyond 2100 through 2300.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I–4.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.6/t in 2015),[13] the estimated cost of the standards proposed in this rule is $43.9 million per year in increased equipment costs, while the estimated annual benefits are $217.9 million in reduced equipment operating costs, $98.4 million in CO_2 reductions, and $7.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $280 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.6/t in 2015, the estimated cost of the proposed standards is $45.9 million per year in increased equipment costs, while the estimated annual benefits are $283.3

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[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I–3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

[12] DOE's analysis estimates both global and domestic benefits of CO_2 emissions reductions. Following the recommendation of the interagency Working Group, DOE places more focus on a global measure of SCC. See section IV.L.1 for further discussion on why the global measure is appropriate.

[13] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

million in reduced operating costs, $98.4 million in CO_2 reductions, and $10.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $346 million per year.

TABLE I–4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 3) FOR WICF REFRIGERATION SYSTEMS

	Discount rate	Million 2015$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
		Benefits		
Consumer Operating Cost Savings	7%	217.9	200.4	237.4.
	3%	283.3	257.9	314.7.
CO_2 Reduction Value ($12.4/t case) **	5%	29.2	27.8	30.7.
CO_2 Reduction Value ($40.6/t case) **	3%	98.4	93.5	103.7.
CO_2 Reduction Value ($63.2/t case) **	2.5%	144.0	136.8	151.9.
CO_2 Reduction Value ($118/t case) **	3%	299.9	285.0	316.3.
NO_X Reduction Value	7%	7.4	7.1	17.4.
	3%	10.3	9.8	24.6.
Total Benefits †	7% plus CO_2 range	255 to 525	235 to 493	285 to 571.
	7%	324	301	359.
	3% plus CO_2 range	323 to 593	295 to 553	370 to 656.
	3%	392	361	443.
		Costs		
Consumer Incremental Product Costs	7%	43.9	43.4	44.4.
	3%	45.9	45.3	46.5.
		Net Benefits		
Total †	7% plus CO_2 range	211 to 481	192 to 449	241 to 527.
	7%	280	258	314.
	3% plus CO_2 range	277 to 548	250 to 507	323 to 609.
	3%	346	316	397.

* This table presents the annualized costs and benefits associated with the considered WICF refrigeration systems shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the equipment purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

** The CO_2 values represent global monetized values of the SCC, in 2015$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For the Primary Estimate and Low Net Benefits Estimate, DOE used a national benefit-per-ton estimate for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.*, 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2011), which are nearly two-and-a-half times larger than those from the ACS study.

‡ Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.6/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.F, IV.I and IV.J of this NOPR.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and the proposed standards would result in the significant conservation of energy. DOE further notes that equipment achieving these standard levels is already commercially available for all equipment classes covered by this proposal. Based on the analyses described, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent energy efficiency levels for the considered WICF refrigeration systems, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this NOPR and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this NOPR that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for WICF refrigeration systems.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (“EPCA” or, in context, “the Act”), Public Law 94–163 (codified as 42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the refrigeration systems used in walk-ins that are the subject of this rulemaking, which include low-temperature dedicated condensing systems and low and medium temperature unit coolers. (42 U.S.C. 6311(1)(G)) EPCA, as amended, prescribed energy conservation standards for this equipment (42 U.S.C. 6313(f)). Under 42 U.S.C. 6295(m), which applies to walk-ins through 42 U.S.C. 6316(a), the agency must periodically review its already established energy conservation standards for covered equipment. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for covered equipment.

Pursuant to EPCA, DOE’s energy conservation program for covered equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered equipment. (42 U.S.C. 6295(o)(3)(A), (r) and 6316(a)) Manufacturers of covered equipment must use the prescribed DOE test procedure as the basis for certifying to DOE that the covered equipment they manufacture complies with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of their covered equipment. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether a manufacturer’s covered equipment comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for WICF refrigeration systems appear at title 10 of the Code of Federal Regulations (“CFR”) § 431.304.

DOE has, however, published a NOPR proposing amendments to the test procedures applicable to the equipment classes addressed in this proposal, 81 FR 54926 (August 17, 2016). The standards considered and proposed in this rulemaking were evaluated using those separately proposed test procedures. While DOE typically finalizes its test procedures for a given regulated product or equipment prior to proposing new or amended energy conservation standards for that product or equipment, see 10 CFR part 430, subpart C, Appendix A, sec. 7(c) (“Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products” or “Process Rule”), DOE did not do so in this instance. As part of the negotiated rulemaking that led to the Term Sheet setting out the standards that DOE is proposing, Working Group members recommended (with ASRAC’s approval) that DOE modify its test procedure for walk-in refrigeration systems. The test procedure changes at issue would simplify the current test procedure in a manner that is consistent with the approach agreed upon by the various parties who participated in the negotiated rulemaking. This circumstance leads DOE to tentatively conclude that providing a finalized test procedure that incorporates this limited change prior to the publication of this standards proposal is not necessary. Accordingly, in accordance with section 14 of the Process Rule, DOE tentatively concludes that deviation from the Process Rule is appropriate here. With respect to more substantive future changes that DOE may consider making to the test procedure consistent with the Term Sheet, DOE anticipates conducting a more complete review and analysis of that modified procedure in advance of any subsequent amendments to the WICF refrigeration system standards that DOE may consider later.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered equipment, including WICF refrigeration systems. Any new or amended standard for a type of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)–(3)(B) and 6316(a)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(a)) Moreover, DOE may not prescribe a standard: (1) For certain equipment, including WICF refrigeration systems, if no test procedure has been established for the equipment, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B) and 6316(a)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products (or covered equipment) likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII) and 6316(a))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a))

EPCA, as codified, also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a type of covered equipment. (42 U.S.C. 6295(o)(1) and 6316(a)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the

United States in any covered equipment type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(a))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for covered equipment divided into two or more subcategories. DOE must specify a different standard level for a type or class of equipment that has the same function or intended use, if DOE determines that equipment within such group: (A) Consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1) and 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2) and 6316(a))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a) through (c) and 6316(a)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d) and 6316(a)).

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 ("EISA 2007"), Public Law 110–140, DOE is generally required to address standby mode and off mode energy use. Specifically, when DOE adopts a standard satisfying the criteria under 42 U.S.C. 6295(o), DOE must generally incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that equipment. In the case of WICFs, DOE is continuing to apply this approach to provide analytical consistency when evaluating potential energy conservation standards for this equipment. See generally, 42 U.S.C. 6316(a).

B. Background

A walk-in cooler and a walk-in freezer is an enclosed storage space refrigerated to temperatures above, and at or below, respectively, 32 °F that can be walked into and has a total chilled storage area of less than 3,000 square feet. (42 U.S.C 6311(20)) By definition, equipment designed and marketed exclusively for medical, scientific, or research purposes are excluded. See id. EPCA also provides prescriptive standards for walk-ins manufactured on or after January 1, 2009, which are described below.

First, EPCA sets forth general prescriptive standards for walk-ins. Walk-ins must have automatic door closers that firmly close all walk-in doors that have been closed to within 1 inch of full closure, for all doors narrower than 3 feet 9 inches and shorter than 7 feet; walk-ins must also have strip doors, spring hinged doors, or other methods of minimizing infiltration when doors are open. Walk-ins must also contain wall, ceiling, and door insulation of at least R–25 for coolers and R–32 for freezers, excluding glazed portions of doors and structural members, and floor insulation of at least R–28 for freezers. Walk-in evaporator fan motors of under 1 horsepower and less than 460 volts must be electronically commutated motors (brushless direct current motors) or three-phase motors, and walk-in condenser fan motors of under 1 horsepower must use permanent split capacitor motors, electronically commutated motors, or three-phase motors. Interior light sources must have an efficacy of 40 lumens per watt or more, including any ballast losses; less-efficacious lights may only be used in conjunction with a timer or device that turns off the lights within 15 minutes of when the walk-in is unoccupied. See 42 U.S.C. 6313(f)(1).

Second, EPCA sets forth requirements related to electronically commutated motors for use in walk-ins. See 42 U.S.C. 6313(f)(2)). Specifically, in those walk-ins that use an evaporator fan motor with a rating of under 1 horsepower ("hp") and less than 460 volts, that motor must be either a three-phase motor or an electronically commutated motor unless DOE determined prior to January 1, 2009 that electronically commutated motors are available from only one manufacturer. (42 U.S.C. 6313(f)(2)(A)) Consistent with this requirement, DOE eventually determined that more than one manufacturer offered these motors for sale, which effectively made electronically commutated motors a required design standard for use with evaporative fan motors rated at under 1 hp and under 460 volts. DOE documented this determination in the rulemaking docket as docket ID EERE–2008–BT–STD–0015–0072. This document can be found at *https://www.regulations.gov/document?D=EERE-2008-BT-STD-0015-0072.* Additionally, EISA authorized DOE to permit the use of other types of motors as evaporative fan motors—if DOE determines that, on average, those other motor types use no more energy in evaporative fan applications than electronically commutated motors. (42 U.S.C. 6313(f)(2)(B)) DOE is unaware of any other motors that would offer performance levels comparable to the electronically commutated motors required by Congress. Accordingly, all evaporator motors rated at under 1 horsepower and under 460 volts must be electronically commutated motors or three-phase motors.

Third, EPCA requires that walk-in freezers with transparent reach-in doors must have triple-pane glass with either heat-reflective treated glass or gas fill for doors and windows. Cooler doors must have either double-pane glass with treated glass and gas fill or triple-pane glass with treated glass or gas fill. (42 U.S.C. 6313(f)(3)(A)–(B)) For walk-ins with transparent reach-in doors, EISA also prescribed specific anti-sweat heater-related requirements: walk-ins without anti-sweat heater controls must have a heater power draw of no more than 7.1 or 3.0 watts per square foot of door opening for freezers and coolers, respectively. Walk-ins with anti-sweat heater controls must either have a heater power draw of no more than 7.1 or 3.0 watts per square foot of door opening for freezers and coolers, respectively, or the anti-sweat heater controls must reduce the energy use of the heater in a quantity corresponding to the relative humidity of the air outside the door or to the condensation on the inner glass pane. See 42 U.S.C. 6313(f)(3)(C)(D).

EPCA also directed the Secretary to issue performance-based standards for walk-ins that would apply to equipment manufactured three (3) years after the final rule is published, or five (5) years if the Secretary determines by rule that a 3-year period is inadequate. (42 U.S.C. 6313(f)(4)) In a final rule published on June 3, 2014 (2014 Final Rule), DOE prescribed performance-based standards for walk-ins manufactured on or after June 5, 2017. 79 FR 32050. These standards applied to the main components of walk-in coolers and walk-in freezers (walk-ins): Refrigeration systems, panels, and doors. The standards were expressed in terms of AWEF for the walk-in refrigeration systems, R-value for walk-in panels, and maximum energy consumption for walk-in doors. The standards are shown in Table I.1.

TABLE II–1—ENERGY CONSERVATION STANDARDS FOR WALK-IN COOLER AND WALK-IN FREEZER COMPONENTS SET FORTH IN 2014 RULE

Class descriptor	Class	Standard level
Refrigeration Systems		Min. AWEF (Btu/W-h) *
Dedicated Condensing, Medium Temperature, Indoor System, <9,000 Btu/h Capacity	DC.M.I, <9,000	5.61
Dedicated Condensing, Medium Temperature, Indoor System, ≥9,000 Btu/h Capacity	DC.M.I, ≥9,000	5.61
Dedicated Condensing, Medium Temperature, Outdoor System, <9,000 Btu/h Capacity	DC.M.O, <9,000	7.60
Dedicated Condensing, Medium Temperature, Outdoor System, ≥9,000 Btu/h Capacity	DC.M.O, ≥9,000	7.60
Dedicated Condensing, Low-Temperature, Indoor System, <9,000 Btu/h Capacity	DC.L.I, <9,000	$5.93 \times 10^{-5} \times Q + 2.33$
Dedicated Condensing, Low-Temperature, Indoor System, ≥9,000 Btu/h Capacity	DC.L.I, ≥9,000	3.10
Dedicated Condensing, Low-Temperature, Outdoor System, <9,000 Btu/h Capacity	DC.L.O, <9,000	$2.30 \times 10^{-5} \times Q + 2.73$
Dedicated Condensing, Low-Temperature, Outdoor System, ≥9,000 Btu/h Capacity	DC.L.O, ≥9,000	4.79
Multiplex Condensing, Medium Temperature **	MC.M	10.89
Multiplex Condensing, Low-Temperature **	MC.L	6.57
Panels		Min. R-value (h-ft2-°F/Btu)
Structural Panel, Medium Temperature	SP.M	25
Structural Panel, Low-Temperature	SP.L	32
Floor Panel, Low-Temperature	FP.L	28
Non-Display Doors		Max. energy consumption (kWh/day) †
Passage Door, Medium Temperature	PD.M	$0.05 \times A_{nd} + 1.7$
Passage Door, Low-Temperature	PD.L	$0.14 \times A_{nd} + 4.8$
Freight Door, Medium Temperature	FD.M	$0.04 \times A_{nd} + 1.9$
Freight Door, Low-Temperature	FD.L	$0.12 \times A_{nd} + 5.6$
Display Doors		Max. energy consumption (kWh/day) ††
Display Door, Medium Temperature	DD.M	$0.04 \times A_{dd} + 0.41$
Display Door, Low-Temperature	DD.L	$0.15 \times A_{dd} + 0.29$

* These standards were expressed in terms of Q, which represents the system gross capacity as calculated in AHRI 1250.

** DOE used this terminology to refer to these equipment classes in the June 2014 final rule. In this rule, DOE has changed "multiplex condensing" to "unit cooler" and the abbreviation "MC" to "UC," consistent with the proposals of the separate test procedure rulemaking under consideration by DOE.

† A_{nd} represents the surface area of the non-display door.

†† A_{dd} represents the surface area of the display door.

After publication of the 2014 Final Rule, the Air-Conditioning, Heating and Refrigeration Institute ("AHRI") and Lennox International, Inc. (a manufacturer of WICF refrigeration systems) filed petitions for review of DOE's final rule and DOE's subsequent denial of a petition for reconsideration of the rule with the United States Court of Appeals for the Fifth Circuit. *Lennox Int'l, Inc.* v. *Dep't of Energy,* Case No. 14–60535 (5th Cir.). Other WICF refrigeration system manufacturers—Rheem Manufacturing Co., Heat Transfer Products Group (a subsidiary of Rheem Manufacturing Co.), and Hussmann Corp.—along with the Air Conditioning Contractors of America (a trade association representing contractors who install WICF refrigeration systems) intervened on the petitioners' behalf. The Natural Resources Defense Council ("NRDC"), the American Council for an Energy-Efficient Economy, and the Texas Ratepayers' Organization to Save Energy intervened on behalf of DOE. As a result of this litigation, a settlement agreement was reached to address, among other things, six of the refrigeration system standards—each of which is addressed in this document.[14]

A controlling court order from the Fifth Circuit, which was issued on August 10, 2015, vacates those six standards. These vacated standards relate to (1) the two energy conservation standards applicable to multiplex condensing refrigeration systems (re-named as "unit coolers" for purposes of this rule) operating at medium and low temperatures and (2) the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at low temperatures. See 79 FR at 32124. The thirteen other standards established in the June 2014 final rule and shown in Table I–1 (that is, the four standards applicable to dedicated condensing refrigeration systems operating at medium temperatures; three standards applicable to panels; and six standards applicable to doors) have not been vacated and remain subject to the June 5, 2017 compliance date prescribed by the June 2014 final rule.[15] To help clarify the applicability of these standards, DOE is also proposing to modify the organization of its regulations to specify the compliance date of these existing standards and the new standards in this proposal. To aid in readability, DOE is proposing to incorporate the new standards in this proposal with the refrigeration system standards that already exist into a single table that will be inserted into a new 10 CFR 431.306(f).

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[14] The "six" standards established in the 2014 final rule and vacated by the Fifth Circuit court order have become "seven" standards due to the split of one of the equipment classes based on capacity. Specifically, the "multiplex condensing, low temperature" class (see 79 FR 32050, 32124 (June 3, 2014)) has become two classes of "unit cooler, low temperature," one with capacity (q_{net}) less than 15,500 Btu/h, and the other with capacity greater or equal to 15,500 Btu/h (see Table I–1).

DOE subsequently established a Working Group to negotiate proposed energy conservation standards to replace the six vacated standards. Specifically, on August 5, 2015, DOE published a notice of intent to establish a walk-in coolers and freezers Working Group ("WICF Working Group"). 80 FR 46521. The Working Group was established under the Appliance Standards and Rulemaking Federal Advisory Committee ("ASRAC") in accordance with the Federal Advisory Committee Act ("FACA") and the Negotiated Rulemaking Act ("NRA"). (5 U.S.C. App. 2; 5 U.S.C. 561–570, Public Law 104–320.) The purpose of the Working Group was to discuss and, if possible, reach consensus on proposed standard levels for the energy efficiency of the affected classes of WICF refrigeration systems. The Working Group was to consist of representatives of parties having a defined stake in the outcome of the proposed standards, and the group would consult as appropriate with a range of experts on technical issues.

Ultimately, the Working Group consisted of 12 members and one DOE representative (see Table II–2). (See Appendix A, List of Members and Affiliates, Negotiated Rulemaking Working Group Ground Rules, Docket No. EERE–2015–BT–STD–0016, No. 0005 at p. 5.) The Working Group met in-person during 13 days of meetings held August 27, September 11, September 30, October 1, October 15, October 16, November 3, November 4, November 20, December 3, December 4, December 14, and December 15, 2015.

TABLE II–2—ASRAC WALK-IN COOLERS AND FREEZERS WORKING GROUP MEMBERS AND AFFILIATIONS

Member	Affiliation	Abbreviation
Ashley Armstrong	U.S. Department of Energy	DOE.
Lane Burt	Natural Resources Defense Council	NRDC.
Mary Dane	Traulsen	Traulsen.
Cyril Fowble	Lennox International, Inc. (Heatcraft)	Lennox.
Sean Gouw	California Investor-Owned Utilities	CA IOUs.
Andrew Haala	Hussmann Corp	Hussmann.
Armin Hauer	ebm-papst, Inc	ebm-papst.
John Koon	Manitowoc Company	Manitowoc.
Joanna Mauer	Appliance Standards Awareness Project	ASAP.
Charlie McCrudden	Air Conditioning Contractors of America	ACCA.
Louis Starr	Northwest Energy Efficiency Alliance	NEEA.
Michael Straub	Rheem Manufacturing (Heat Transfer Products Group)	Rheem.
Wayne Warner	Emerson Climate Technologies	Emerson.

All of the meetings were open to the public and were also broadcast via webinar. Several people who were not members of the Working Group attended the meetings and were given the opportunity to comment on the proceedings. Non-Working Group meeting attendees are listed in Table II–3.

TABLE II–3—OTHER ASRAC WALK-IN COOLERS AND FREEZERS MEETING ATTENDEES AND AFFILIATIONS

Attendee	Affiliation	Abbreviation
Akash Bhatia	Tecumseh Products Company	Tecumseh.
Bryan Eisenhower	VaCom Technologies	VaCom.
Dean Groff	Danfoss	Danfoss.
Brian Lamberty	Unknown	Brian Lamberty.
Michael Layne	Turbo Air	Turbo Air.
Jon McHugh	McHugh Energy	McHugh Energy.
Yonghui (Frank) Xu	National Coil Company	National Coil.
Vince Zolli	Keeprite Refrigeration	Keeprite.

To facilitate the negotiations, DOE provided analytical support and supplied the group with a variety of analyses and presentations, all of which are available in the docket *https://www.regulations.gov/docket?D=EERE–2015–BT–STD–0016*). These analyses and presentations, developed with direct input from the Working Group members, include preliminary versions of many of the analyses discussed in this NOPR, including a market and technology assessment; screening analysis; engineering analysis; energy use analysis; markups analysis; life cycle cost and payback period analysis; shipments analysis; and national impact analysis.

On December 15, 2015, the Working Group reached consensus on, among other things, a series of energy conservation standards to replace those that were vacated as a result of the litigation. The Working Group assembled its recommendations into a single term sheet (See Docket EERE–2015–BT–STD–0016, No. 0052) that was presented to, and approved by the ASRAC on December 18, 2015. DOE considered the approved term sheet, along with other comments received during the negotiated rulemaking process, in developing energy conservation standards that this document proposes to adopt.

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[15] DOE has issued an enforcement policy with respect to dedicated condensing refrigeration systems operating at medium temperatures. See *http://www.energy.gov/gc/downloads/walk-coolerwalk-freezer-refrigeration-systems-enforcement-policy.*

III. General Discussion

A. Test Procedure

DOE's current energy conservation standards for WICF refrigeration systems are expressed in terms of AWEF (*see* 10 CFR 431.304(c)(10)). AWEF is an annualized refrigeration efficiency metric that expresses the ratio of the heat load that a system can reject (in British thermal units ("Btu")) to the energy required to reject that load (in watt-hours). The existing DOE test procedure for determining the AWEF of walk-in refrigeration systems is located at 10 CFR part 431, subpart R. The current DOE test procedure for walk-in refrigeration systems was originally established by an April 15, 2011 final rule, which incorporates by reference the Air-Conditioning, Heating, and Refrigeration Institute ("AHRI") Standard 1250–2009, *2009 Standard for Performance Rating of Walk-In Coolers and Freezers.* 73 FR 21580, 21605–21612.

On May 13, 2014, DOE updated its test procedures for WICFs in a final rule published in the **Federal Register** (May 2014 test procedure rule). 79 FR 27388. That rule allows WICF refrigeration system manufacturers to use an alternative efficiency determination method ("AEDM") to rate and certify their basic models by using the projected energy efficiency level derived from these simulation models in lieu of testing. It also adopted testing methods to enable an OEM to readily test and rate its unit cooler or condensing unit individually rather than as part of matched pairs. Under this approach, a manufacturer who distributes a unit cooler as a separate component must rate that unit cooler as though it were to be connected to a multiplex system and must comply with any applicable standard DOE may establish for a unit cooler. Similarly, a manufacturer distributing a condensing unit as a separate component must use fixed values for the suction (inlet) conditions and certain nominal values for unit cooler fan and defrost energy, in lieu of actual unit cooler test data, when calculating AWEF. (10 CFR 431.304(c)(12)(ii)

DOE notes that, although the final rule established the approach for rating individual components of dedicated condensing systems, it still allows matched-pair ratings of these systems. This approach is required for dedicated condensing systems with multiple capacity stages and/or variable-capacity, since the current test procedure of AHRI 1250–2009 does not have a provision for testing individual condensing units with such features. An OEM would have to use matched-pair testing to rate multiple- or variable-capacity systems, but can choose matched-pair or individual-component rating for single-capacity dedicated condensing systems.

The May 2014 test procedure final rule also introduced several clarifications and additions to the AHRI test procedure for WICF refrigeration systems. These changes can be found in 10 CFR 431.304.

The Working Group also recommended that DOE consider making certain amendments to the test procedure to support the refrigeration system standards being proposed in this NOPR to replace the six vacated standards. DOE is conducting a separate test procedure rulemaking to address these recommendations. All documents and information pertaining to the test procedure rulemaking can be found in docket [EERE–2016–BT–TP–0030]. The standard levels discussed in this document were evaluated using the proposed test procedure.

B. Technological Feasibility

1. General

As part of its energy conservation standards rulemakings, DOE generally conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the equipment at issue. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available equipment or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on equipment utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii) through (iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this NOPR discusses the results of the screening analysis for WICF refrigeration systems, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR technical support document ("TSD").

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (42 U.S.C. 6295(p)(1) and 6316(a)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for WICF refrigeration systems, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.9 of this proposed rule and in chapter 5 of the NOPR TSD.

C. Equipment Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE often divides covered equipment into separate classes by the type of energy used, equipment capacity, or some other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE generally considers such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q) and 6316(a))

As previously noted in section II.B, a court order vacated the portions of the June 2014 final rule relating to multiplex condensing refrigeration systems (re-named unit coolers for purposes of this rule) operating at medium and low temperatures and dedicated condensing refrigeration systems operating at low temperatures. Therefore, this rulemaking focuses on standards related to these refrigeration system classes. More information relating to the scope of coverage is described in section IV.A.1 of this proposed rule.

D. Energy Savings

1. Determination of Savings

For each trial standard level ("TSL"), DOE projected energy savings from application of the TSL to the considered WICF refrigeration systems purchased in the 30-year period that begins in the first full year of compliance with the proposed standards (2020–2049).[16] The savings are measured over the entire lifetime of the considered WICF refrigeration systems purchased in the above 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for the equipment at issue would likely evolve in the absence of energy conservation standards.

DOE used its national impact analysis ("NIA") spreadsheet model to estimate national energy savings ("NES") from potential standards adopted for the considered WICF refrigeration systems at issue. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in terms of site energy, which is the energy directly consumed by equipment at the locations where they are used. Based on the site energy, DOE calculates NES in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle ("FFC") energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[17] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by the covered equipment addressed in this notice. For more information on FFC energy savings, see section IV.H.1 of this proposed rule.

2. Significance of Savings

To adopt any new or amended standards for a type of covered equipment, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B) and 6316(a)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended "significant" energy savings in the context of section 325 of EPCA (*i.e.* 42 U.S.C. 6295(o)(3)(B) and 6316(a)) to be savings that are not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section V.B.3), are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I) through (VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential proposed standard on manufacturers, DOE conducts a manufacturer impact analysis ("MIA"), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (*i.e.* INPV), which values the industry on the basis of expected future cash-flows; (2) cash-flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in the LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and 6316(a)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, equipment energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered equipment in the first full year of compliance with the proposed standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of adopting the proposed standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 6316(a)) As discussed in section III.D, DOE uses the NIA spreadsheet models to project national energy savings.

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[16] Each TSL is comprised of specific efficiency levels for each equipment class. The TSLs considered for this NOPR are described in section V.A. DOE conducted a sensitivity analysis that considers impacts for equipment shipped in a 9-year period.

[17] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

d. Lessening of Utility or Performance of Products

In establishing equipment classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(a)) Based on data available to DOE, the standards proposed in this proposed rule would not reduce the utility or performance of the equipment under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(a)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii) and 6316(a)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information on how to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section IV.L of this proposed rule. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.1.

g. Other Factors

In determining whether an energy conservation standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(a)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described in this preamble, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii) (and as applied to WICFs through 42 U.S.C. 6316(a)), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i), which applies to WICFs through 42 U.S.C. 6316(a). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this proposed rule.

F. Compliance Date of Standards

Under EPCA, performance-based standards for WICFs, including the initial establishment of those standards, have a statutorily-prescribed lead time starting on the applicable final rule's publication date and ending three (3) years later. Starting on that latter date, WICF manufacturers must comply with the relevant energy conservation standards. See 42 U.S.C. 6313(f)(4)–(5). DOE may extend the lead time to as long as five (5) years if the Secretary determines, by rule, that the default 3-year period is inadequate. (See id.) At this time, DOE anticipates that publication of a final rule would occur in the second half of 2016, which would provide a compliance date that would fall in the second half of 2019 for any new standards that DOE would adopt as part of this rulemaking.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to the considered WICF refrigeration systems. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools, which are mainstays in DOE's standards rulemaking proceedings and continue to be refined in response to public input, are available on the DOE Web site for this rulemaking: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=56.*

DOE also developed a spreadsheet-based engineering model that calculates performance of different WICF equipment designs and summarizes cost versus efficiency relationships for the classes covered in this rulemaking. DOE made this spreadsheet available on the rulemaking Web site. Additionally, DOE used output from the latest version of EIA's *Annual Energy Outlook* ("*AEO*"), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and equipment classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of the WICF refrigeration systems under consideration. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Equipment Classes

The NOPR of the separate WICF test procedure rulemaking noted earlier in section III.A addressed the coverage of process cooling walk-ins and their components under DOE's regulations and proposed a definition for process cooling to distinguish this equipment from other walk-ins. 81 FR at 54926 (August 17, 2016). As discussed in the test procedure NOPR, process cooling walk-ins would be considered to be walk-ins, making them subject to the prescriptive statutory requirements already established by Congress. See 42 U.S.C. 6313(f). In addition, their panels and doors would be subject to both the statutorily-prescribed standards for these components, and the standards established by the June 2014 final rule. See 42 U.S.C. 6313(f) and 10 CFR 431.306. However, a process cooler may not need to satisfy the refrigeration system standards—including those being proposed today—depending on the circumstances.

DOE proposed to define a process cooling refrigeration system as a refrigeration system that either (1) is distributed in commerce with an enclosure such that the refrigeration system capacity meets a certain minimum threshold, indicating that it is designed for refrigeration loads much greater than required simply to hold the temperature of the shipped enclosure at refrigerated temperature, or (2) is a unit cooler with a height dimension of at least 4.5 feet—a specification that its discharge air flow will impinge directly on stored products. 81 FR at 54926 (Augsut 17, 2016). Because of the specific aspects of this definition, the exclusions to the refrigeration system standards would apply to (a) refrigeration systems sold as part of a complete package, including the insulated enclosure, and the refrigeration system for which the capacity per volume meets the proposed process cooling definition, (b) dedicated condensing systems sold as a matched pair in which the unit cooler meets the requirements of the proposed process cooling definition, and (c) unit coolers that meet the requirements of the proposed definition. As discussed in the test procedure document, the exclusion would not apply to condensing units distributed in commerce without unit coolers.

DOE proposes to specify that the refrigeration system standards exclusions be added to the regulatory text at 10 CFR 431.306.

As discussed in section II.B, this NOPR covers proposed energy conservation standards for walk-in refrigeration systems to replace the six standards vacated by the Fifth Circuit court order issued in August 2015. These vacated standards relate to (1) the two energy conservation standards applicable to unit coolers operating at medium and low temperatures and (2) the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at low temperatures. As noted earlier, the remaining standards for walk-ins promulgated by DOE remain in place.

In the June 2014 final rule, DOE divided refrigeration systems into classes based on their treatment under the test procedure with respect to condensing unit configuration. 79 FR at 32069–32070. In the May 2014 test procedure rule, DOE established a rating method for walk-in refrigeration system components distributed individually; that is, unit coolers sold by themselves are tested and rated with the multiplex condensing system test, while condensing units sold by themselves are tested and rated with the dedicated condensing system test. In other words, all unit coolers sold alone would belong to the (as termed at the time) multiplex condensing class, while all condensing units sold alone would belong to the dedicated condensing class. WICF refrigeration systems consisting of a unit cooler and condensing unit that are manufactured as a matched system and sold together by the manufacturer would also be rated with the dedicated condensing system test and belong to the dedicated condensing class.

During the Working Group meetings, a caucus of manufacturers submitted shipment data showing that the vast majority (>90 percent) of their unit coolers and condensing units were sold as stand-alone equipment, rather than paired with the opposite component. (Docket No. EERE–2015–BT–STD–0016, No. 0029) The data suggested that manufacturers would certify the majority of the equipment they sell using the rating method specified for walk-in refrigeration components that are distributed individually; thus, DOE expects that the majority of systems being certified within the dedicated condensing class would consist of condensing units sold alone, while a much smaller number of systems certified within this class would have been tested as manufacturer-matched pairs under DOE's test procedure.

All unit coolers sold alone would be treated for certification purposes as belonging to the unit cooler class, and likewise, as discussed in the previous paragraph, unit coolers sold alone must be tested and rated with the multiplex condensing system test. However, manufacturer data also showed that the majority of WICF unit coolers are ultimately installed in applications where they are paired with a dedicated condensing unit. See id. (noting in column "K" that approximately 82 percent of unit coolers are used in dedicated condensing applications, while approximately 12 percent are used in multiplex condensing applications. For this reason, DOE is proposing to re-name the "multiplex condensing" class as the "unit cooler" class, in acknowledgment of the fact that most unit coolers are not installed in multiplex condensing applications. For this rulemaking, DOE also conducted additional analysis to evaluate the energy use of unit coolers if they are installed in a dedicated condensing system application—*i.e.*, an application for separately-sold unit coolers that is not covered in the test procedure or reflected in the equipment rating. This is discussed in sections IV.C.2 and IV.E.

In the June 2014 final rule, DOE established a single AWEF standard for low-temperature multiplex condensing systems (unit coolers) regardless of capacity. This particular standard was one of those vacated through the controlling court order from the Fifth Circuit. Based on further comment and analysis conducted during the negotiated rulemaking to examine potential energy conservation standards for this class of equipment, DOE is proposing to consider different standard levels for different capacities of unit coolers, which would necessitate establishing separate classes for these systems based on capacity ranges. The updated analysis showed that the appropriate standard level for low-temperature unit coolers could vary with capacity. As a result, in DOE's view, applying different standard levels (in the form of different AWEF equations or values) based on capacity would provide a better-fitting approach than its previous one when setting the energy efficiency performance levels for walk-in refrigeration systems. In addition to being consistent with EPCA, which authorizes DOE to create capacity-based classes, see 42 U.S.C. 6295(q), this approach would provide a parallel structure to the one DOE had established in the June 2014 final rule for low-temperature dedicated systems. See 79 FR at 32124 (detailing different capacity-based classes for low-temperature dedicated condensing refrigeration systems). (Although the June 2014 standards for low-temperature dedicated systems were also vacated, analysis conducted during the negotiated rulemaking continued to affirm that it is reasonable to consider different capacity-based classes for low-temperature dedicated condensing refrigeration systems.) The Working Group discussed this issue and ultimately agreed to consider two classes for low-temperature unit coolers based on whether their net capacity is above or below 15,500 Btu/h. See Term Sheet at EERE–2015–BT–STD–0016, No. 0056, recommendation #5. That agreement is reflected in this proposed rule, bringing the total number of standards proposed in this notice to seven. These seven standards would, if adopted, replace the six standards that were vacated.

2. Technology Options

In the technology assessment for the June 2014 final rule, DOE identified 15 technology options to improve the efficiency of WICF refrigeration systems, as measured by the DOE test procedure:

- Energy storage systems
- Refrigeration system override
- Automatic evaporator fan shut-off
- Improved evaporator and condenser fan blades
- Improved evaporator and condenser coils
- Evaporator fan control
- Ambient sub-cooling
- Higher-efficiency fan motors
- Higher-efficiency compressors
- Liquid suction heat exchanger
- Defrost controls
- Hot gas defrost
- Floating head pressure
- Condenser fan control
- Economizer cooling

DOE continued to consider these 15 options in formulating the WICF refrigeration system standards detailed in this proposal. Discussions during the Working Group negotiation meetings on September 11, 2015 and September 30, 2015 suggested that DOE should consider variable-speed evaporator fan control separately for periods when the compressor is off, and when the compressor is on. At various points in the meetings, Working Group members (Rheem, Hussmann, and Manitowoc) stated that while fan control in the off-cycle mode would be beneficial for both single-capacity and variable-capacity systems, fan control in the on-cycle mode would be beneficial only for variable-capacity systems. (Docket No. EERE–2015–BT–STD–0016, Rheem and Hussmann, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 56–72 and Rheem, Hussmann, and Manitowoc, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 112–117) This is because the unit cooler class is dominated by unit coolers that are also used in dedicated condensing installations, and these coolers—when equipped with evaporator fans that vary speed in the on-cycle mode—would need to be paired with either variable-speed or multiple-capacity compressors to produce an energy efficiency benefit from this feature. However, most dedicated condensing systems under consideration in this rule have single-speed/single-capacity compressors. In the scenario where a unit cooler with on-cycle and off-cycle variable-speed capability is paired with a single-speed or single-capacity compressor, the on-cycle variable-speed feature would not deliver in-field savings while the off-cycle variable speed feature would be expected to deliver savings. DOE determined that delineating these two features into separate design options would more readily facilitate analysis of savings attributed to each feature. Furthermore, during the September 30, 2015 public meeting, Rheem pointed out that using a variable-speed evaporator fan control during the on-cycle mode requires additional features such as a controller that can account for temperature and/or pressure sensor inputs to allow an algorithm to modify fan speed so that delivered cooling matches refrigeration load. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 119–123) These extra features would be expected to contribute to a cost difference between on-cycle and off-cycle variable-speed fan control, further suggesting that they should be considered as separate design options. Thus, as presented in the subsequent October 15, 2015 public meeting, DOE considered off-cycle and on-cycle fan controls to be different technology options for the purposes of this rulemaking analysis. (See October 15, 2015 Public Meeting Presentation, slide 42, available in Docket No. EERE–2015–BT–STD–0016, No. 0026, at p. 42)

See chapter 3 of the TSD for further details on the technologies DOE considered.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial equipment or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial equipment could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on equipment utility or equipment availability.* If it is determined that a technology would have significant adverse impact on the utility of the equipment to significant subgroups of consumers or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant

adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. Furthermore, DOE also excludes from consideration in the engineering analysis any technology that does not affect rated energy consumption as it would not be considered beneficial in the context of this rulemaking. The reasons for excluding any technology are discussed below.

1. Technologies Having No Effect on Rated Energy Consumption

In the June 2014 final rule, DOE determined that the following technologies do not affect rated energy consumption:

- Liquid suction heat exchanger
- Refrigeration system override
- Economizer cooling

DOE has not received any further evidence that these technologies should be considered and has not included them in the analysis supporting the proposals of this document.

As discussed in section III.A, DOE is proposing to remove the method for testing systems with hot gas defrost from the test procedure in a separate rulemaking. Thus, this option will not affect rated energy consumption and DOE is not considering it further.

2. Adaptive Defrost and On-Cycle Variable-Speed Evaporator Fans

Consistent with the recommendations made during the Working Group negotiations, DOE's supporting analysis for this proposal does not further consider adaptive defrost and on-cycle variable-speed fans as options that manufacturers can use to improve the rated performance of their equipment. Adaptive defrost is covered by the DOE test procedure as a credit applied to any piece of equipment that has the feature—the test procedure does not include a test method for validating the performance of this feature. The Working Group was unable to develop a definition that adequately defined this feature in a way that all systems meeting the definition would receive performance improvements consistent with the test procedure credit. Hence, the Working Group recommended that certified ratings and standards should be based on equipment not having the feature, although the test procedure could still include it to allow manufacturers to make representations regarding improved performance for equipment having the feature. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (December 3, 2015), No. 0057 at pp. 130–153) DOE has proposed this approach in the separate test procedure rulemaking it is conducting. Thus, the analysis does not consider adaptive defrost as a design option.

Regarding on-cycle variable-speed evaporator fans, as mentioned in section IV.A.1, unit coolers sold individually are tested as though they are used in multiplex applications, but the majority are in fact installed in dedicated condensing applications. Furthermore, most dedicated condensing systems are single-capacity while the design option would only save energy when part of a variable-capacity system. (As a multiplex system is a variable-capacity system, the design option would save energy when the unit cooler is actually installed with a multiplex system.) Because of this discrepancy, most of the savings that would be predicted based on ratings would not be achieved in the field, and manufacturers in the Working Group objected to DOE considering design options for equipment features that would not be useful to most end-users. (Docket No. EERE–2015–BT–STD–0016, No. 0006 at p. 1, item #5c and Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 56–72.) Despite the possibility of some field savings from this feature as mentioned in this preamble (that is, in scenarios where the unit cooler with the on-cycle variable speed feature is installed in a multiplex application or with a variable-speed or multi-capacity dedicated condenser), DOE is currently proposing not to consider this option in the analysis, which is consistent with a proposed modification to the test procedure that would preclude manufacturers from certifying compliance to DOE using ratings derived from testing of on-cycle variable-speed fans, as discussed in the following paragraph.

The Working Group ultimately included in the term sheet a recommendation that would require manufacturers to make representations, including certifications of compliance to DOE, of the energy efficiency or energy consumption of WICF refrigeration systems without adaptive defrost or on-cycle variable-speed fans. See Term Sheet at EERE–2015–BT–STD–0016, No. 0056, recommendation #4. Likewise, they recommended that compliance with the applicable WICF refrigeration system standard should be assessed without using these technologies. As part of this approach, manufacturers would be permitted to make an additional representation of the energy efficiency or consumption for a basic model using either of these technologies as measured in accordance with the DOE test procedure, provided that the additional represented value has been certified to DOE per 10 CFR 429.12. Id. However, the benefit from using these technologies would not be factored in when determining compliance with the proposed standard. Id. The separate test procedure rulemaking currently underway is proposing to adopt these changes, and the NOPR for that rulemaking discusses the reasoning behind adopting these changes in more detail. Because these technologies would not have an effect on the rated efficiency of refrigeration systems for purposes of compliance under the proposed revisions to the test procedure, DOE did not consider these technologies in its analysis supporting the proposed standards.

3. Screened-Out Technologies

In the June 2014 final rule, DOE screened out the following technologies from consideration:

- Energy storage systems (technological feasibility)
- High efficiency evaporator fan motors (technological feasibility)
- 3-phase motors (impacts on equipment utility)
- Improved evaporator coils (impacts on equipment utility)

DOE has not received any evidence beyond those technologies it has already considered that would weigh in favor of including these screened-out technologies and is continuing to exclude them for purposes of this proposal. Chapter 4 of the TSD contains further details on why DOE is screening out these technologies.

4. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 meet all four screening criteria and that their benefits can be measured using the DOE test procedure. In summary, DOE chose the following technology options to be examined further as design options in DOE's NOPR analysis:

- Higher efficiency compressors
- Improved condenser coil
- Higher efficiency condenser fan motors
- Improved condenser and evaporator fan blades
- Ambient sub-cooling

- Off-cycle evaporator fan control
- Variable speed condenser fan control
- Floating head pressure

DOE determined that the benefits of these technology options can be measured using the DOE test procedure. Furthermore, the technology options are technologically feasible because they are being used or have previously been used in commercially-available equipment or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, equipment availability, health, or safety).

For additional details on DOE's screening analysis, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost ("MPC") and improved WICF refrigeration system efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline equipment to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of equipment available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing equipment for efficiency and determining cost from a detailed bill of materials ("BOM") derived from reverse engineering representative equipment. The efficiency ranges from that of the typical WICF refrigeration system sold today (*i.e.*, the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MPC; this relationship between increasing efficiency and increasing cost is referred to as a cost-efficiency curve. DOE conducted the engineering analysis for the June 2014 final rule using a design-option approach. 79 FR at 32072. DOE received no comments suggesting that it use of one of the alternative engineering analysis approaches. Consequently, DOE used a design-option approach in the analysis supporting this proposal.

DOE did, however, make several changes to its engineering analysis based on discussions and information provided during the Working Group negotiation meetings. These changes are described in the following sections.

1. Refrigerants

The analysis for the June 2014 final rule assumed that the refrigerant R–404A would be used in all new refrigeration equipment meeting the standard. 79 FR at 32074. On July 20, 2015, the U.S. Environmental Protection Agency ("EPA") published a final rule under the Significant New Alternatives Policy ("SNAP") prohibiting the use of R–404A in certain retail food refrigeration applications. See 80 FR 42870 ("July 2015 EPA SNAP Rule"). Under the rule, R–404A can no longer be used in new supermarket refrigeration systems (starting on January 1, 2017), new remote condensing units (starting on January 1, 2018), and certain stand-alone retail refrigeration units (starting on either January 1, 2019 or January 1, 2020 depending on the type of system). The last of these groups could include WICF refrigeration systems consisting of a unit cooler and condensing unit packaged together into a single piece of equipment. See 40 CFR part 82, appendix U to Subpart G (listing unacceptable refrigerant substitutes). EPA explained that most commercial walk-in coolers and freezers would fall within the end-use category of either supermarket systems or remote condensing units and would be subject to the rule. 80 FR at 42902.

Given that manufacturers would not be allowed to use R–404A in WICF refrigeration systems when the proposed WICF standards would take effect, DOE conducted its analysis using an alternative refrigerant that can be readily used in most types of WICF refrigeration systems under the July 2015 EPA SNAP rule: R–407A. DOE made this selection after soliciting and obtaining input from the Working Group regarding which refrigerants would most likely be used to replace R–404A in WICF refrigeration systems and be most appropriate to use in its analysis to model WICF system performance. Lennox recommended the use of R–407A because it is currently a viable refrigerant for WICF refrigeration equipment and the manufacturer predicted that it would be the most common refrigerant in supermarket applications in the near future. (Docket No. EERE–2015–BT–STD–0016, Lennox, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 12–13) With respect to the issue of whether R–407A would be appropriate for all types of WICF refrigeration equipment, Rheem acknowledged that R–407A would not be allowed for packaged refrigeration equipment (where the condensing unit and unit cooler components are factory-assembled into a single piece of equipment) beginning January 1, 2020, but noted that this type of equipment comprises a very small segment of the WICF refrigeration market. It added that for this type of equipment, R–448A and R–449A would likely be the preferred alternatives and that they are similar to R–407A in terms of their refrigerant properties, making the choice of using R–407A for the analysis an appropriate one to simulate WICF refrigeration system performance with any of the likely replacement refrigerants. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 14–15)

In a subsequent meeting on September 30, 2015, the Working Group voted that DOE should use R–407A in its analysis going forward. The vote passed with 12 members voting "yes" and one member voting "no." The member who voted "no" (unidentified in the transcript) said that his constituency only uses R–448A. However, the CA IOUs observed that the performance of systems using R–448A is approximately equivalent to systems using R–407A. As a result of the Working Group's vote and discussion, DOE agreed to redo the analysis using R–407A going forward. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 34–39) For purposes of this proposal, DOE's analysis assumes the use of R–407A but a manufacturer would be permitted to use any acceptable refrigerant in its equipment to meet the proposed standard.

Changing the refrigerant used in the assumptions, however, required some changes to DOE's analysis due to the properties of R–407A. Both R–404A and R–407A are blends of refrigerants that have different boiling points. This means that unlike pure substances such as water, the temperature of the refrigerant changes as it boils or condenses, because one of the refrigerants in the blend, having a lower boiling point, boils off sooner than the other(s). This phenomenon is called "glide." The refrigerants that make up R–404A have nearly identical boiling points. For simplicity, the analysis assumed that R–404 remains at the same temperature as it undergoes a phase change (that is, it would not experience glide). In contrast, R–407A undergoes a much more significant temperature change when it boils—the temperature can rise as much as 8 degrees between the saturated liquid condition (the temperature at which a liquid begins to boil, also called the "bubble point") and the saturated vapor condition (the temperature at which a vapor begins to condense, also called the "dew point"). The average of these two temperatures, bubble point and dew point, is called the mid-point temperature. DOE revised its analysis to account for the glide of R–407A, as discussed in the following sections.

2. As-Tested Versus Field-Representative Performance Analysis

DOE's engineering analysis is based on energy consumption characteristics as measured using the applicable DOE test procedure. The purpose is to replicate the manufacturer's rating so that the costs incurred for manufacturers to produce systems that meet the standard are accurately reflected. The engineering analysis outputs are generally also used as inputs to the downstream analyses such as the energy use, LCC, and NIA (which assess the economic benefits of energy savings of installed equipment), since energy use in the test is intended to reflect field energy use. However, for a number of reasons discussed during the negotiations, but primarily because of the switch in refrigerant from R–404A to R–407A described in the previous section, there are differences between as-tested performance and field performance (*i.e.* the performance that would be expected from a field-installed system). The field-installed system performance could not be captured sufficiently in the energy use analysis, so DOE conducted an intermediate analysis to bridge the gap between the engineering analysis and the downstream analyses to predict aspects of field performance that would not be measured by the test procedure. DOE refers to this intermediate analysis as the "field-representative analysis" to distinguish it from the engineering and other analyses. Specific differences in how DOE modeled as-tested and in-field performance in the analysis are discussed as part of section IV.C.5 and further in chapter 5 of the TSD.

Normally, when a test procedure becomes inadequate to capture representative equipment performance, DOE initiates a rulemaking to revise the test procedure. A revision of this magnitude fell outside the scope of the negotiated rulemaking. DOE has tentatively concluded that implementation of all the necessary test procedure changes is sufficiently complex that it would be prudent to work with the industry standard development groups that developed the original AHRI standard that DOE incorporated by reference into the WICF test procedure. The contemplation of such future changes does not implicate this standards rulemaking, however, because the standards set forth in this proposal are based on a limited group of refrigeration systems and rely on the modifications to the test procedure that DOE has already proposed to make. The fireld-representative analysis further ensures that the proposed test procedures adequately capture the impacts of the standard for the relevant equipment classes. Accordingly, the proposed standards would not have been affected by the incorporation of these additional test procedure changes. Furthermore, the contemplated future changes to the test procedure would affect the standards for medium temperature, dedicated condensing systems, which were not vacated by the litigation and are not at issue in this standards rulemaking. Therefore, DOE is not proposing to revise the test procedure within the context of this rulemaking (except as proposed in section III.A), but reserves the right to update the test procedure in a future rulemaking.

Although DOE is allowing manufacturers to rate and certify unit coolers and condensing units separately, as described in section IV.A.1, and has structured its revised analysis based on this separate-component rating approach, these components will ultimately be installed as part of complete refrigeration systems, and the field-representative analysis reflects this fact. Some installations involve new systems consisting of two new components (a new condensing unit and a new unit cooler). The efficiency of these systems will reflect the design options included in both components. Other installations will involve replacing just the condensing unit or just the unit cooler. The efficiency of these systems will reflect the design options included in the new component only; DOE assumed for purposes of this analysis that the existing component would be at the baseline efficiency level.

Ultimately, DOE provided outputs from the field-representative analysis outputs to the downstream analysis for four scenarios: (1) New unit cooler and new condensing unit that are installed together in the field; (2) new unit cooler that is installed with a multiplex system; (3) new unit cooler that is installed with an existing condensing unit in the field; and (4) new condensing unit that is installed with an existing unit cooler in the field. Scenarios 1 through 3 apply to the evaluation of unit cooler efficiency levels, while scenarios 1 and 4 apply to evaluation of condensing unit efficiency levels. The scenarios analyzed in the downstream analysis are described in section IV.F. DOE evaluated equipment classes of tested unit coolers and condensing units in each of the relevant scenarios. (In the case of the medium temperature unit cooler class, DOE modeled the first scenario as a new unit cooler paired with a dedicated condensing unit meeting the standard for dedicated condensing, medium temperature systems established in the June 2014 final rule, which remains in effect.) During the November 20, 2015 public meeting, DOE presented a diagram mapping the tested classes to the field-representative scenarios. (Docket No. EERE–2015–BT–STD–0016, No. 0041 at p. 17) Details of these four scenarios are also provided in chapter 5 of the TSD.

3. Representative Equipment for Analysis

In the analysis for the June 2014 final rule, DOE analyzed a range of representative WICF refrigeration systems within each equipment class. The representative systems covered different capacities, compressor types, and evaporator fin spacing. In all, DOE analyzed 47 different representative refrigeration systems across all 10 equipment classes. See the June 2014 final rule TSD, chapter 5, pages 5–4 through 5–6 (Docket No. EERE–2008–BT–STD–0015, No. 0031) and 79 FR 32050 at 32073. DOE made several changes to the set of representative systems it analyzed for this proposal.

First, as discussed in section IV.C.1, DOE conducted its analysis for this proposed rule based on the assumption that refrigerant R–407A would be used by walk-in refrigeration system manufacturers. In its prior analysis, not all of the compressor types analyzed in the June 2014 final rule were designed to be compatible with this refrigerant. In the Working Group meeting held on September 11, 2015, National Coil Company, a meeting attendee, pointed out that low-temperature hermetic compressors are not likely to be developed for use with R–407A, and Lennox suggested analyzing scroll compressors for the low-capacity classes that could have used hermetic compressors using R–404A. Emerson, a Working Group member and major compressor manufacturer, agreed with the approach. (Docket No. EERE–2015–BT–STD–0016, National Coil Company, Lennox, and Emerson, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 29–30) A caucus of manufacturers later submitted a document to the docket recommending specific WICF equipment capacity ranges for different types of low-temperature R–407A compressors that DOE should consider in its analysis: 5,000 to 60,000 Btu/h for scroll compressors and 15,000 to 120,000 Btu/h for semi-hermetic compressors. (Docket No. EERE–2015–BT–STD–0016, No. 0008 at p. 25)

Second, the Working Group recognized that DOE's analysis would require additional capacity levels beyond those that had already been considered in the June 2014 final rule. As part of that rule's analysis, DOE analyzed low-temperature, dedicated condensing refrigeration systems with nominal capacities of 6,000, 9,000, 54,000, and 72,000 Btu/h. 79 FR at 32073. During the Working Group meetings, a caucus of manufacturers suggested that DOE consider analyzing low-temperature dedicated condensing systems with nominal capacities of 15,000 Btu/h and 25,000 Btu/h. (Docket No. EERE–2015–BT–STD–0016, No. 0008 at p. 25; see also Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 30, 2015), No. 0067 at p.175) Following this recommendation, DOE analyzed low-temperature dedicated condensing systems at 25,000 Btu/h and considered adding a representative size of 15,000 Btu/h if the initial results indicated that an additional capacity size was required to better model the performance of low-temperature dedicated condensing systems. Ultimately, efficiency trends across capacities suggested that the 25,000 Btu/h point was adequate to represent the intermediate capacity range given the similarity to the AWEF range covered by the 9,000 Btu/h, 25,000 Btu/h, and 54,000 Btu/h. This trend is shown in a graph. See EERE–2015–BT–STD–0016–0051 (presenting a spreadsheet containing a "pivot awefs" tab showing efficiency trends across capacities for dedicated condensing systems). Thus, because of the sufficiency of the 25,000 Btu/h at representing the intermediate capacity range for these systems, a full analysis of a 15,000 Btu/h dedicated condensing system was unnecessary for the purposes of this proposal.

Third, in the June 2014 final rule, DOE analyzed representative unit coolers at two different configurations of evaporator fin spacing, 4 fins per inch and 6 fins per inch. (Unit cooler heat exchangers use a fin-tube design, meaning that refrigerant is circulated through copper tubes with aluminum strips, or "fins" attached to the tubes to facilitate heat transfer to the air passing through the heat exchanger.) See the June 2014 final rule TSD, chapter 5, pages 5–6 (Docket No. EERE–2008–BT–STD–0015, No. 0131). In the September 11, 2015, Working Group meeting, DOE sought feedback on the need to analyze both fin configurations for both medium- and low-temperature unit coolers. Rheem commented that an analysis based on configurations with 4 fins per inch for low-temperature and 6 fins per inch for medium-temperature applications would be appropriate. In their view, these fin configurations would adequately represent these systems. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 11, 2015), No. 0061 at p. 109) On the basis of this input, DOE reiterated its plans to conduct the analysis using six fins per inch for medium temperature unit coolers and 4 fins per inch for low-temperature unit coolers. The Working Group raised no objections to this approach. (Docket No. EERE–2015–BT–STD–0016, DOE, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 183–184)

Table IV–1 identifies, for each class of refrigeration system, the nominal capacities of the equipment DOE analyzed in the engineering analysis for this proposed rule. Chapter 5 of the TSD includes additional details on the representative equipment sizes and classes used in the analysis.

TABLE IV–1—DETAILS OF REPRESENTATIVE EQUIPMENT ANALYZED

Equipment class	Sizes analyzed (nominal Btu/h)	Compressor types analyzed	Unit cooler fins per inch
DC.L.I, <6,500 Btu/h	6,000	Scroll	N/A
DC.L.I, ≥6,500 Btu/h	9,000	Scroll	N/A
	*25,000	Scroll, Semihermetic	N/A
	54,000	Semihermetic	N/A
DC.L.O, <6,500 Btu/h	6,000	Scroll	N/A
DC.L.O, ≥6,500 Btu/h	9,000	Scroll	N/A
	*25,000	Scroll, Semihermetic	N/A
	54,000	Semihermetic	N/A
	72,000	Semihermetic	N/A
UC.M	4,000	N/A	6
	9,000	N/A	6
	24,000	N/A	6
UC.L, <15,500 Btu/h	4,000	N/A	4
	9,000	N/A	4
UC.L, ≥ 15,500 Btu/h	18,000	N/A	4
	40,000	N/A	4

* Indicates a representative capacity that was not analyzed in the June 2014 final rule analysis. All other listed representative nominal capacities had also been analyzed in the June 2014 final rule.

4. Cost Assessment Methodology

a. Teardown Analysis

In support of the June 2014 final rule, DOE conducted a teardown analysis to calculate manufacturing costs of WICF components. The teardown analysis consisted of disassembling WICF equipment; characterizing each subcomponent based on weight, dimensions, material, quantity, and manufacturing process; and compiling a bill of materials incorporating all materials, components, and fasteners to determine the overall manufacturing cost. DOE supplemented this process with "virtual teardowns," in which it used data from manufacturer catalogs to extrapolate cost assumptions to other equipment that DOE did not physically disassemble. 79 FR at 32077. For the analysis supporting this proposed rule, DOE conducted additional physical and virtual teardowns of WICF equipment to ensure that its cost model was representative of the current market.

b. Cost Model

The cost model is one of the analytical tools DOE used in constructing cost-efficiency curves. In developing this model, DOE derives cost model curves from the teardown BOMs and the raw material and purchased parts databases. Cost model results are based on material prices, conversion processes used by manufacturers, labor rates, and overhead factors such as depreciation and utilities. For purchased parts, the cost model considers the purchasing volumes and adjusts prices accordingly. The manufacturers of WICF components (*i.e.* OEMs), convert raw materials into parts for assembly, and also purchase parts that arrive as finished "ready-to-assemble" goods. DOE bases most raw material prices on past manufacturer quotes that have been adjusted to present day prices using Bureau of Labor Statistics ("BLS") and American Metal Market ("AMM") inflators. DOE inflates the costs of purchased parts similarly and also considers the purchasing volume—the higher the purchasing volume, the lower the price. Prices of all purchased parts and non-metal raw materials are based on the most current prices available, while raw metals are priced on the basis of a 5-year average to smooth out volatility in raw material prices. In calculating the costs for this proposal, DOE updated its cost data to reflect the most recent 5-year price average.

DOE uses the cost model to analyze the MPC impacts of certain design options that affect the size of equipment components and casings. For instance, a design option that increases the volume of a condenser coil will incur material costs for the increase in condenser coil materials, and will incur further material costs for the increase in unit case size and condenser fan size that are required to accommodate the larger coil. To calculate costs for this proposed rule, DOE revised its assumptions about how some design options would impact the growth of a unit's case and components. DOE updated the cost data to account for the cost impacts from changes to the unit components and casing for certain design options. Chapter 5 of the TSD describes DOE's cost model and definitions, assumptions, data sources, and estimates.

c. Manufacturing Production Cost

Once it finalizes the cost estimates for all the components in each teardown unit, DOE totals the cost of the materials, labor, and direct overhead used to manufacture the unit to calculate the manufacturer production cost of such equipment. DOE then breaks the total cost of the equipment into two main costs: (1) The full manufacturer production cost, referred to as MPC; and (2) the non-production cost, which includes selling, general, and administration ("SG&A") costs; the cost of research and development; and interest from borrowing for operations or capital expenditures. DOE estimated the MPC at each design level considered for each equipment class, from the baseline through max-tech. After incorporating all of the data into the cost model, DOE calculated the percentages attributable to each element of total production cost (*i.e.*, materials, labor, depreciation, and overhead). These percentages were used to validate the data by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the MIA. See section IV.J.3.a for more details on the production costs.

d. Manufacturing Markup

The manufacturer markup converts MPC to manufacturer selling price ("MSP"). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission 10–K reports filed by publicly-traded manufacturers primarily engaged in commercial refrigeration manufacturing and whose combined equipment range includes WICF refrigeration systems. In the June 2014 final rule, DOE calculated an average markup of 35 percent for WICF refrigeration systems. 79 FR at 32079. In the absence of any adverse comments made during the Working Group meetings, DOE applied the same manufacturer markup in its supporting analysis for this proposal.

e. Shipping Cost

For the June 2014 final rule, DOE developed estimates of shipping rates by conducting market research on shipping rates and by interviewing manufacturers of the covered equipment. DOE found that most manufacturers, when ordering component equipment for installation in their particular manufactured equipment, do not pay separately for shipping costs; rather, it is included in the selling price of the equipment. However, when manufacturers include the shipping costs in the equipment selling price, they typically do not mark up the shipping costs for profit, but instead include the full cost of shipping as part of the price quote. 79 FR at 32079. DOE did not significantly change its methodology for calculating shipping costs in this proposed rule. See chapter 5 of the TSD for more details on the shipping costs.

DOE seeks comment regarding the method it used for estimating the manufacturing costs related to the equipment discussed in this proposal. This is identified as Issue 1 in section VII.E, "Issues on Which DOE Seeks Comment."

5. Component and System Efficiency Model

At each representative capacity within each equipment class covered in this rulemaking (see section IV.C.3), DOE selected a particular model of unit cooler or condensing unit, as applicable, to represent the capacity. DOE then used a spreadsheet-based efficiency model to predict the efficiency of each representative unit as tested by the test procedure, similar to the method used in the June 2014 final rule. Generally, the efficiency is calculated as the annual box load—a function of the capacity of the unit—divided by the power consumed by the unit. The power consumption accounts for the power used by, as applicable, the compressor, condenser and evaporator fans, defrost, and/or other energy-using components. For dedicated systems with the condensing unit located outdoors, the box load is dependent on a distribution of outdoor ambient temperatures specified by the test procedure.

In the June 2014 final rule, DOE analyzed two types of systems: Dedicated condensing systems consisting of a manufacturer-paired unit cooler and condensing unit; and systems consisting of a unit cooler paired with a multiplex condenser. However, the focus of the analysis for this proposed rule was on performance of either the condensing unit or unit cooler as tested, rather than a matched pair, since the revised engineering analysis is based on the rating of these components. As discussed in section IV.C.2, DOE also conducted a field representative analysis to evaluate the behavior of systems as installed to develop inputs to the downstream analyses. The following sections describe changes to DOE's analysis as compared with the June 2014 final rule analysis, describing changes associated both with the as-tested engineering analysis and the field-representative analysis. More information on the efficiency analysis can be found in chapter 5 of the TSD.

a. Unit Coolers (Formerly Termed the Multiplex Condensing Class)

DOE continued to evaluate unit coolers in a manner similar to the June 2014 final rule analysis. That analysis, consistent with the DOE test procedure, examined the performance of unit coolers connected to a multiplex condensing system using AWEF—*i.e.* the ratio of the box load of the walk-in divided by the energy use attributed to the system. (Box load is a factor of the net capacity.) Also per the test procedure, the energy use is the sum of the energy consumed directly by the unit cooler, primarily by the fans (and defrost energy for low-temperature units), and the energy attributed to the multiplex condensing system (compressors, condensers, etc.), calculated by dividing the gross capacity of the unit cooler by an assumed multiplex system EER. However, DOE's updated analysis made changes to some aspects of the calculation.

First, DOE recognizes that the as-tested performance of unit coolers may differ from field-representative performance, a difference due primarily (though not solely) to the change in refrigerant from R–404A to R–407A. As discussed in section IV.C.1, R–407A experiences a significant change in temperature ("glide") as it evaporates or condenses, while R–404 does not. In typical evaporators, R–407A experiences a glide of approximately 6 degrees from the evaporator entrance to the saturated vapor (dew point) condition. (Although the total glide of R–407A is approximately 8 degrees between bubble point and dew point, refrigerant entering the evaporator is already partially evaporated and is thus at a slightly higher temperature than the true bubble point). The test procedure specifies the evaporator dew point temperature that must be used during a test, and DOE continued to use this dew point temperature for unit coolers using R–407A in the as-tested analysis. In the field-representative analysis, however, DOE shifted the dew point to maintain equivalence of heat transfer of R–404A and R–407A: That is, the heat exchanger should operate with the same average refrigerant temperature in the two-phase region for both refrigerants. Because of the glide of R–407A, an average temperature consistent with R–404A would result in a dew point temperature that is 3 degrees higher than the dew point of a unit cooler using R–404A—that is, half of the 6-degree glide. Likewise, DOE also reduced the superheat (*i.e.* the excess of temperature of a vapor above its dew point) in the field-representative case by 3 degrees so that the exit temperature of the refrigerant from the evaporator is consistent with the as-tested case, where the superheat is specified. (See October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at pp. 20–22.)

Second, DOE adjusted its calculation to measure the net capacity for unit coolers. The June 2014 final rule analysis calculated the net capacity as the refrigerant mass flow multiplied by the rise in refrigerant enthalpy between the inlet and outlet of the unit cooler, minus the fan heat. DOE determined the mass flow rate by choosing for its analysis a compressor with a capacity close to that of the manufacturer-reported capacity of the unit cooler when measured at the test procedure's conditions. However, National Coil Company noted that once the inlet and outlet refrigerant conditions are defined, the compressor does not affect the capacity. It suggested that DOE avoid using a calculation methodology that relies on compressor characteristics. (Docket No. EERE–2015–BT–STD–0016, National Coil Company, Public Meeting Transcript (September 11, 2015), No. 0061 at p. 115) DOE also conducted additional testing, which indicated that the unit coolers' measured capacities are lower than the nominal capacities reported in manufacturer literature. These results suggested that using a unit cooler's nominal capacity would overestimate both capacity and efficiency measured in the test. (September 11, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0003 at p. 40) Rheem suggested that this discrepancy may be due in part to the different test conditions used during testing versus those used when determining the nominal capacity of a unit cooler. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 116–117) For the current analysis, DOE used performance modeling of WICF evaporator coils, calibrated based on testing data, to develop an equation relating manufacturer-reported nominal capacity to the net capacity that would be measured during unit cooler testing (as DOE is assuming all unit coolers will be rated using the multiplex system test as discussed in section IV.C.2). (September 30, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0007 at pp. 55 and 57) The tests were conducted using R–404A, but DOE used the performance modeling to predict the capacity trend for unit coolers using R–407A refrigerant, since this was the refrigerant used in the engineering analysis, as discussed in section IV.C.1. (See the October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at pp. 24, 26, and 28) DOE also developed different equations for the as-tested analysis and for the field-representative results, where the field-representative calculations account for the 3-degree shift in dew point and reduction in superheat discussed in the previous paragraph. DOE used this approach for determining unit cooler measured capacity in the subsequent analysis, with agreement from Working Group members. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 205–209)

Third, DOE revised the input assumption for refrigerant suction dew point temperature (*i.e.,* dew point temperature of the refrigerant at the entrance to the condensing unit—which is typically lower than the refrigerant dew point at the unit cooler exit due to pressure drop in the refrigerant line connecting the unit cooler and condensing unit). The suction dew point temperature is used in the engineering analysis calculations to determine the appropriate multiplex system EER values as specified in the test procedure. In the June 2014 final rule analysis, DOE used EER values corresponding to a suction dew point temperature of 19 °F for medium temperature systems and −26 °F for low-temperature systems. For the revised analysis, DOE used 23 °F for medium-temperature systems and −22 °F for low-temperature systems, both of which have higher corresponding EER levels. DOE's initial use of the lower temperatures was based on a conservative interpretation of the open-ended nature of the AHRI 1250–2009 test procedure, which is incorporated by reference in DOE's test procedure. The suction dew point temperatures used in the current analysis are now two degrees lower than the evaporator exit dew point temperature used in the test. (See September 11, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0003 at p. 39) The Working Group generally agreed with this approach and applying that 2-degree dew point reduction to account for pressure drop in the suction line. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 11, 2015), No. 0061 at p. 113)

Fourth, DOE used a different set of EER values in its field-representative analysis of unit coolers connected to multiplex condensing systems. The Working Group observed that the EER values used in the test procedure are likely based on R–404A, while, as discussed in this preamble, DOE's updated analysis to represent field performance was based on the use of R–407A. Members of the Working Group representing a caucus of manufacturers submitted EER values that they asserted would be more representative of a multiplex condensing system operating in the field, since the new values were based on the use of R–407A. (Docket No. EERE–2015–BT–STD–0016, No. 0009) DOE observed that the Working Group-recommended values were significantly lower than the test procedure values, which cannot be explained by the difference in refrigerants. The Working Group did not object to the use of the submitted EER values. Accordingly, DOE used these new EER values in the field-representative analysis for unit coolers (while continuing to use EER values from the test procedure in the as-tested analysis). (Docket No. EERE–2015–BT–STD–0016, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 194–198; See also the October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 19)

b. Condensing Units/Dedicated Condensing Class

DOE made several changes to the way it analyzed dedicated condensing refrigeration systems. In the June 2014 final rule, DOE analyzed systems consisting of a paired unit cooler and condensing unit to represent the dedicated condensing class. In contrast, as described in sections III.A, IV.A.1, and IV.C.2, DOE based its analysis for this proposed rule on testing and rating condensing units as individual components rather than as part of matched-pair systems in order to evaluate efficiency levels for the dedicated condensing equipment classes. The as-tested analysis uses the nominal values for unit cooler fan and defrost energy use as prescribed in the DOE test procedure. (10 CFR 431.304(c)(12))

As in the June 2014 final rule analysis, DOE calculated compressor performance using the standard 10-coefficient compressor model described in section 6.4 of AHRI Standard 540–2004 (AHRI 540), "Performance Rating of Positive Displacement Refrigerant Compressors and Compressor Units." See the June 2014 final rule TSD, chapter 5, pp. 5–22 (Docket No. EERE–2008–BT–STD–0015, No. 0131) However, in the updated analysis, DOE used compressor coefficients for compressors operating with R–407A to be consistent with the approach discussed in section IV.C.1. (See the October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 18.) Also, DOE used a return gas temperature of 5 degrees F in generating the coefficients using the software, suggested as the appropriate temperature for a low-temperature system by a caucus of manufacturers. (Docket No. EERE–2015–BT–STD–0016, No. 0008 at p. 26)

The change to refrigerant R–407A also affected the condensing temperature in the analysis. As discussed in section IV.C.1, R–407A experiences approximately 8 degrees of glide, or temperature change, as it condenses. A caucus of manufacturers submitted information on R–407A glide and requested that DOE increase the assumed condenser dew-point temperatures by 4 °F to maintain a midpoint temperature consistent with that of the analysis done with R–404A. (Docket No. EERE–2015–BT–STD–0016, No. 0008 at pp. 4–9) The midpoint temperature is representative of the average refrigerant temperature in the condenser heat exchanger. After considering the merits of the argument, DOE implemented this change in the analysis going forward. This change is similar to the shift in dew point on the evaporator side described in section IV.C.5.a, but is applied in the as-tested analysis as well as the field-representative analysis for condensing units. This is because the test procedure specifies the outdoor air temperature rather than the condensing temperature for tests of condensing units, unlike for unit coolers, for which the test procedure specifies the evaporating temperature. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 23–24 and Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 184–187) (See also October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at pp. 19–20)

In the June 2014 final rule, DOE used the saturated vapor temperature at the evaporator exit to derive the compressor power and mass flow from the 10-coefficient equation described in this preamble. For the analysis supporting this proposed rule, DOE instead used the suction dew point in the compressor coefficient equations. (See October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 29) As described in section IV.C.5.a, the suction dew point is 2 degrees lower than the dew point at the evaporator exit; this approach is consistent with DOE's selection of suction dew point for choosing the appropriate EER for multiplex systems.

Also in the June 2014 final rule, DOE assumed that the refrigerant entering the unit cooler would be a subcooled liquid (that is, its temperature would be lower than the saturated liquid temperature in the condenser, primarily due to exposure of the refrigerant line to lower ambient temperatures). Rheem suggested that this would be inappropriate for a condenser-only test because there would be two phases of refrigerant in the receiver, and without a separate subcooler within the condensing unit, the refrigerant would not experience subcooling significantly greater than zero at the condenser exit. DOE assumed liquid line subcooling would occur after the condenser exit and thus would not be captured in the condenser-only test. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 131–133) DOE revised its analysis to assume 0 degrees of additional sub-cooling in the condensing unit for baseline systems. (See October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 30)

As described in section IV.C.3, one of the analyzed capacities of condensing unit—25,000 Btu/h nominal capacity—could be sold with two compressor types, scroll or semi-hermetic. The June 2014 final rule efficiency model also analyzed multiple compressor types at certain representative sizes. In that analysis, DOE developed a separate cost-efficiency curve for each different compressor type. The life-cycle cost analysis then aggregated both curves into one set of efficiency levels, and selected points among the aggregated efficiency levels defining a new "cost-effective" curve where, when faced with a choice between two compressors, the manufacturer would choose the less expensive design among the options at the same efficiency level. DOE indicated in the Working Group meeting on September 30, 2015 that for the revised analysis, a single cost-efficiency curve would be developed for each representative condensing unit capacity, but that DOE was considering whether compressor type should be considered as a design option or whether DOE should aggregate the efficiency curves for the two compressors into a single curve. In the same meeting, ASAP suggested that it would be appropriate to consider higher-efficiency compressors as a design option, but Rheem raised concerns that this could restrict them to using only one compressor or one compressor manufacturer's offering. (Docket No. EERE–2015–BT–STD–0016, ASAP, Public Meeting Transcript (September 30, 2015), No. 0067 at p. 181–182; Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (September 30, 2015), No. 0067 at p. 182–183) As presented in the November 3, 2015 public meeting, DOE ultimately revised its approach to create a single aggregated cost-efficiency curve in the engineering analysis for the 25,000 Btu/h nominal capacity, thus aggregating results developed separately for the scroll and semi-hermetic compressors. Consequently, DOE did not consider compressor type as a design option. (Docket No. EERE–2015–BT–STD–0015, various parties, Public Meeting Transcript (November 3, 2015), No. 0064 at pp. 75–80 and the November 3, 2015 Public Meeting Presentation, available in Docket No. EERE–2015–BT–STD–0016, No. 0033 at pp. 29–32) See chapter 5 of the TSD for more details of how DOE aggregated the cost-efficiency curves for the compressor types.

c. Field-Representative Paired Dedicated Condensing Systems

DOE based its ''as-tested'' engineering analysis for dedicated condensing systems on an evaluation of condensing units tested individually. DOE recognizes that this approach is an approximation of actual in-field performance, in large part because each condensing unit will ultimately be paired with a given unit cooler in the field. Furthermore, certain conditions specified in the test procedure are contingent upon the use of a refrigerant that does not experience significant glide, and systems using R–407A, a refrigerant that does experience glide, would behave differently under such conditions than systems using a non-glide refrigerant. To account for the potential calculated differences between as-tested versus in-field performance, DOE conducted a separate field-representative analysis that accounts for actual system operation, which necessarily includes the performance of both the condensing unit and the unit cooler with which it is paired. This field-representative analysis includes a number of key elements.

First, although refrigerant subcooling at the exit of a condensing unit tested alone would be zero degrees as discussed in section IV.C.5.b, during field operation of a system, subcooling between the condenser exit and unit cooler entrance may occur due to exposure of the refrigerant line to ambient air with a temperature lower than the refrigerant. DOE's June 2014 final rule analysis of paired systems assumed that subcooling at the unit cooler inlet would be 12 °F, based on test data for paired systems—DOE presented these data during the negotiated rulemaking. (Docket No. EERE–2015–BT–STD–0016, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 133–135 and September 30, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0007 at p. 23) However, the test data were based on systems using R–404A and DOE reasoned that the glide from R–407A could result in a lower refrigerant temperature at the condenser exit (4 degrees) than for R–404A, assuming the same mid-point temperature is used. (See the discussion regarding glide and maintaining the same average refrigerant temperature for different refrigerants, described in the previous two sections, for further details.) Thus, DOE assumed a subcooling temperature of 8 degrees in the field-representative analysis—4 degrees lower than the 12 degrees attributed to operation with R–404A. In effect, the analysis assumes that the final liquid temperature would be the same for both refrigerants. DOE also checked to make sure that this final liquid refrigerant temperature was not lower than the ambient temperature. The Working Group did not object to this approach and DOE continued to use it in preparing this proposal. (Docket No. EERE–2015–BT–STD–0016, DOE, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 213–214; October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 30.

Second, DOE assumed a unit cooler exit dew point for the field-representative analysis that is 3 degrees higher than the exit dew point temperature specified in the test procedure. This is similar to the adjustment made for condensing units, described in the previous paragraphs. To account for the 6 degrees of glide within an evaporator using R–407A and maintain the same average refrigerant temperature as the equivalent R–404A analysis, the exit dew point must be 3 degrees higher that the prescribed test procedure temperature. DOE also adjusted the evaporator exit superheat to maintain a refrigerant temperature at the unit cooler exit that would be consistent with the equivalent R–404A analysis. In the as-tested analysis, the evaporator superheat was assumed to be 6 °F for low temperature systems and 10 °F in medium temperature systems; in the field representative analysis, DOE reduced both of these by 3 degrees to account for the 3-degree increase in evaporator dew point temperature. (October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 22) Similar to the as-tested analysis, DOE continued to use a 2-degree reduction in dew point temperature between the evaporator exit and condensing unit entrance to represent suction line pressure drop in the field-representative analysis. (October 15, 2015 Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 29)

Third, the as-tested analysis of a dedicated condensing system (*i.e.* a condensing unit tested alone) uses nominal values for the unit cooler fan and defrost power, as required by the test procedure. See 10 CFR 431.304(c)(12)(ii). During the Working Group meetings, manufacturers provided data on representative unit cooler fan and defrost power. (Docket No. EERE–2015–BT–STD–0016, No. 0011). As presented in the October 15, 2015 public meeting, DOE used these data to estimate unit cooler fan and defrost power for a field-matched system since the manufacturer-supplied data would be, when compared to other available data, the most likely dataset to be reasonably representative of installed system performance. (Docket No. EERE–2015–BT–STD–0016, No. 0026 at p. 40 and Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 227–228) DOE did not receive any adverse comments and proceeded with this approach in the analysis for this proposed rule.

6. Baseline Specifications

Because there have not been any previous performance-based standards for WICF refrigeration systems, there is no established baseline efficiency level for this equipment. DOE developed baseline specifications for the representative units in its analysis, described in section IV.C.3, by examining current manufacturer literature to determine which characteristics represented baseline equipment versus high-efficiency equipment. DOE conducted additional testing and teardowns to supplement the data used in the June 2014 final rule analysis and identify characteristics not listed in manufacturer literature. DOE assumed that all baseline refrigeration systems comply with the current prescriptive standards in EPCA—namely, (1) evaporator fan motors of under 1 horsepower and less than 460 volts are electronically commutated motors (brushless direct current motors) or three-phase motors and (2) walk-in condenser fan motors of under 1 horsepower are permanent split capacitor motors, electronically commutated motors, or three-phase motors. (See section II.B for further details on current WICF standards.)

During the negotiations, Working Group members observed that DOE's baseline energy consumption values did not seem to account for some equipment features, such as controls, that may be included on the equipment and would use energy during a test. DOE's test procedure for WICFs incorporates by reference the industry standard AHRI 1250–2009 in its entirety, with certain exceptions as outlined in 10 CFR 431.304. (See 10 CFR 431.303, which incorporates this industry standard by reference.) One provision in section 5.1 of this industry standard requires that the power input measured during the test should include power used by accessories such as condenser fans, controls, and similar accessories. Members of the Working Group requested that DOE either revise its test procedure to introduce an exception to the industry standard modifying the provision so as not to measure these loads during a test, or to account for power used by these accessories in the analysis. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 51–56; See also Docket No. EERE–2015–BT–STD–0016, No. 0006 at p. 1, recommendation #4.) DOE requested, and Working Group members then provided, additional data regarding auxiliary power-using equipment features, fan and defrost power, and condenser coil sizing for baseline refrigeration systems. (Docket No. EERE–2015–BT–STD–0016, Nos. 0010, 0011, and 0030, respectively.) In lieu of introducing a modification to the test procedure, DOE considered this information in formulating baseline specifications in this NOPR analysis. See chapter 5 of the TSD for more detailed baseline specifications for the representative systems.

7. Design Options

Section IV.B.4 lists technologies that passed the screening analysis and that DOE examined further as potential design options. DOE updated the analysis for several of these design options based on information received during the Working Group meetings. The following sections address design options for which DOE received new information or conducted additional analysis during the negotiation period. All design options are discussed in more detail in chapter 5 of the TSD.

a. Higher Efficiency Compressors

In the analysis for the June 2014 final rule, DOE considered a design option for a high-efficiency compressor designed to run at multiple discrete capacities or variable capacity. During the Working Group meetings, members noted that a provision in section 7.8.1 of AHRI 1250–2009, the industry test procedure incorporated by reference, specifies that the method for testing a condensing unit alone (*i.e.* not as part of a matched pair) applies only to single-capacity WICF refrigeration systems. (See 10 CFR 431.303, which incorporates this industry standard by reference; see also Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (September 11, 2015), No. 0061 at pp. 87–94 and Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 157–167).

As discussed in section IV.C.2, most condensing units are sold separately by OEMs and would be rated separately, rather than rated with specified unit coolers as matched pair systems. DOE's analysis for dedicated condensing unit standards has been updated to reflect the concerns noted by the Working Group by being based on the testing and rating of condensing units alone rather than as part of matched pairs. While the analysis reflects this change, the current test procedure does not allow testing of variable-capacity systems using the condenser-alone rating method. Adopting standards that would require use of a variable-capacity compressor would force manufacturers to rate and sell units as matched pairs, a result that, in DOE's view, may create an excessive burden on manufacturers and the related distribution system, since it would restrict the option of selling individual components and because the numbers of possible matched pair systems would be much greater than the number of individual condensing units and unit coolers (for example, if a manufacturer sells 5 condensing units and 5 unit coolers that could all be paired with each other, there are 25 possible matched-pair combinations as compared with 10 individual units). Therefore, DOE did not analyze variable-capacity compressors. This approach does not preclude manufacturers from designing and selling systems with variable-capacity compressors but would require them to test and certify such systems as matched-pair systems—which would need to comply with the applicable energy conservation standards. DOE may consider this design option in a future rulemaking if the test procedure can be modified so that it properly addresses variable-capacity systems.

b. Improved Condenser Coil

In its supporting analysis for the June 2014 final rule, DOE considered a design option for an improved condenser coil. The improved condenser coil would have more face area and heat transfer capacity than a baseline coil. DOE assumed that the coil would be sized to lower the condensing temperature by 10 degrees F, thus reducing the compressor power input, and increasing the compressor's cooling capacity. See the June 2014 final rule TSD, chapter 5, pages 5–44 and 5–45 (Docket No. EERE–2008–BT–STD–0015, No. 0131).

DOE's revised analysis still includes this design option, but with modified details. During Working Group meetings, manufacturers said that DOE had underestimated the cost increase for a condenser coil with a 10-degree lower condensing temperature. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 56–60) DOE requested, and manufacturers then provided, data on specifications related to representative baseline and oversized coils. (Docket No. EERE–2015–BT–STD–0016, Lennox, No. 0030) DOE considered the data in updating the costs of this design option.

In subsequent meetings, some meeting attendees—namely, McHugh Energy, ASAP, and NEEA—were concerned about the high cost of improving the coil, relative to the savings that would be achieved. They noted that a TD reduction of 10 degrees may be too costly to be a realistic option, and requested that DOE further optimize condensing unit improvements in terms of both coil face area and air side heat transfer. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 3, 2015), No. 0064 at pp. 50–57 and Public Meeting Transcript (November 20, 2015), No. 0066 at pp 34–38; see also email correspondence at Docket No. EERE–2015–BT–STD–0016, No. 0040) Thus, DOE considered a new design approach that would result in a 5-degree condensing temperature reduction. Based in part on the data submitted by manufacturers on condenser coil sizing, DOE estimated that following this approach would require a 33 percent increase in airflow and 50 percent increase in total heat transfer area over the baseline. DOE incorporated the revised cost and energy characteristics of this option into the analysis. (December 3, 2015 Public Meeting

Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0049 at pp. 8–11)

c. Improved Condenser and Evaporator Fan Blades

The supporting analysis for the June 2014 final rule considered design options for improved evaporator and condenser fan blades that could increase fan efficiency by five percent. See the June 2014 final rule TSD, chapter 5, pages 5–46 and 5–47 (Docket No. EERE–2008–BT–STD–0015, No. 0131). During Working Group negotiation meetings, a caucus of manufacturers submitted a document asking DOE to provide additional data supporting the efficiency improvement estimate. (Docket No. EERE–2015–BT–STD–0016, No. 0006 at p. 2, clarification question #2) A Working Group member representing a fan supplier (ebm-papst) responded that five percent was a reasonable estimate of fan efficiency improvement and that he had observed an example of a 12 percent efficiency improvement when replacing a stamped aluminum blade with an engineered plastic blade. (Docket No. EERE–2015–BT–STD–0016, ebm-papst, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 144–147) McHugh Energy, another negotiation meeting attendee, referenced a report by the Florida Solar Energy Center showing that it was possible to achieve fan efficiency improvements between 17 and 25 percent. (Docket No. EERE–2015–BT–STD–0016, McHugh Energy, Public Meeting Transcript (September 30, 2015), No. 0067 at pp. 147–148) Both stakeholders also submitted supporting material to the rulemaking docket (Docket No. EERE–2015–BT–STD–0016, No. 0013 and Docket No. EERE–2015–BT–STD–0016, No. 0014). Based on the updated information received, DOE's analysis continues to assume that an average five percent fan efficiency improvement can be achieved using higher-efficiency evaporator and condenser fan blades. In DOE's view, this level of improvement in fan efficiency is, based on available information reviewed as part of this rulemaking, achievable and reasonable. While it may be possible for higher efficiencies to be achieved, DOE is retaining a more conservative approach to ensure its projected efficiency improvements are realistically achievable within the lead-time proposed for this rule.

d. Off-Cycle Evaporator Fan Control

As with the June 2014 final rule, DOE continued to analyze two modes of off-cycle evaporator fan control: modulating fan control, which cycles the fans on and off with a 50 percent duty cycle when the compressor is off; and variable-speed fan control, which turns the fan speed down to 50 percent of full speed when the compressor is off. DOE did not receive any comments on its efficiency assumptions for modulating and variable-speed fans and DOE is not proposing to change its approach to calculating the efficiency of this option. DOE assumed that all evaporator fan motors are electronically commutated ("EC") motors. See section II.B (discussing EPCA's requirements for EC or three-phase motors) and section IV.B (explaining DOE's reasoning for screening out three phase motors) for further background. DOE is aware that variable-speed EC motors typically cost more than single-speed EC motors. For purposes of this analysis, DOE assumed that the costs of constant-torque permanent-magnet motors are representative of single-speed EC evaporator fan motors and the costs of constant-airflow permanent-magnet motors are representative of variable-speed EC evaporator fan motors. (DOE also implemented these assumptions in its analysis of variable-speed EC condenser fan motors.) DOE is aware that motor suppliers may sell different brands of motors with similar capabilities. See chapter 5 of the TSD for more details on motor costs.

e. Floating Head Pressure

Floating head pressure is a type of WICF refrigeration control that allows the condensing pressure to decrease at low ambient temperatures, thus lowering the condensing temperature and improving compressor efficiency. Previously, in support of the June 2014 final rule, DOE analyzed two modes of operation for this option: floating head pressure with a standard thermostatic expansion valve ("TXV"), and floating head pressure with an electronic expansion valve ("EEV"). In testing conducted in support of this proposed rule, DOE found that systems with floating head pressure had a minimum head pressure of 180 psi at the lowest ambient rating temperature of 35 °F when using a TXV. DOE predicted that systems equipped with an EEV could maintain an even lower pressure because an EEV would be able to control the refrigerant flow at even larger pressure differences between the lowest and highest ambient temperatures and avoid instability. However, at the time, DOE's understanding was that the minimum condensing pressure and temperature is also limited by the compressor operating envelope. DOE assumed that for hermetic and semi-hermetic compressors, the lowest condensing dew point temperature at which the compressor can operate is approximately 75 °F, corresponding to a pressure of approximately 175 psi (for the June 2014 final rule's analysis, DOE increased this to a minimum of 180 psi to be consistent with the test results). For scroll compressors, DOE assumed the minimum condensing temperature is approximately 50 °F, corresponding to a pressure of approximately 120 psi (DOE increased this to a minimum of 125 psi for the final rule's analysis). DOE assumed this minimum pressure would apply at the lowest ambient rating condition—35 °F. DOE made these compressor operating envelope assumptions based on manufacturer compressor literature that it gathered at the time. See the June 2014 final rule TSD, chapter 5, pages 5–52 and 5–53 (Docket No. EERE–2008–BT–STD–0015, No. 0131).

In discussions with the Working Group, Emerson (a compressor manufacturer) suggested that semi-hermetic compressors that operate at lower pressures that are consistent with the floating head pressure with EEV option are currently available. (Docket No. EERE–2015–BT–STD–0016, Emerson, Public Meeting Transcript (December 3, 2015), No. 0057 at pp. 47–51) DOE conducted additional research and found technical literature from multiple compressor manufacturers showing semi-hermetic compressors using R–407A that could operate at condensing temperatures as low as 50 °F, corresponding to a vapor pressure of about 101 psi. (For R–404A, a condensing temperature of 50 °F corresponds to a vapor pressure of about 118 psi). In light of this updated information, DOE included both semi-hermetic and scroll compressors when evaluating the design option to improve energy efficiency with lower floating head pressure using an EEV. (As discussed in section IV.C.1, DOE did not analyze systems with hermetic compressors.)

DOE also more closely optimized the interaction among design options at the highest efficiency levels. Specifically, after DOE updated its design options and efficiency model, implementing the larger condenser coil caused AWEF to drop for large semi-hermetic units due to the interaction of floating head pressure, variable-speed condenser fans and the condenser coil option. This AWEF reduction was associated with operation of the condenser fans at excessive speed for the 35 °F test condition. To compensate, DOE increased the minimum head pressure from 125 psi to 135 psi at the lowest ambient temperature. (December 14

Public Meeting Presentation, Docket No. EERE–2015–BT–STD–0016, No. 0050 at pp. 4–6; see also Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (December 14, 2015), No. 0059 at pp. 9–20).

8. Cost-Efficiency Curves

After determining the cost and energy savings attributed to each design option, DOE then evaluates the design options in terms of their manufacturing cost-effectiveness: that is, the gain in as-tested AWEF that a manufacturer would obtain for implementing the design option on their equipment, versus the cost for using that option. The goal is to determine which designs a manufacturer is more or less likely to implement to meet a given standard level. For each representative unit listed in section IV.C.3, DOE calculates performance as measured using the test procedure efficiency metric, AWEF, and the manufacturing production cost (*i.e.* MPC). When using a design-option analysis, DOE calculates these values first for the baseline efficiency and then for more-efficient designs that add design options in order of the most to the least cost-effective. The outcome of this design option ordering is called a “cost-efficiency curve” consisting of a set of manufacturing costs and AWEFs for each consecutive design option added in order of most to least cost-effective. DOE conducted this analysis for the equipment classes evaluated in this proposal at the representative nominal capacities discussed in section IV.C.3.

Table IV–2 and Table IV–3 show the AWEFs calculated in this manner. Additional detail is provided in appendix 5A of the NOPR TSD, including graphs of the cost-efficiency curves and correlation of the design option groups considered with their corresponding AWEF levels.

TABLE IV–2—ENGINEERING ANALYSIS OUTPUT: CALCULATED AWEFS FOR DC CLASSES

Representative unit			As-tested AWEF with each Design Option (DO) added*								
Equipment class	Nominal Btu/h	Compressor type		Base-line	DO 1	DO 2	DO 3	DO 4	DO 5	DO 6	DO 7
DC.L.I, <6,500 Btu/h	6,000	Scroll	DO		EC	CD2	CB2				
			AWEF	1.81	1.87	2.19	2.20				
DC.L.I, ≥6,500 Btu/h	9,000	Scroll	DO		EC	CD2	CB2				
			AWEF	1.98	2.04	2.37	2.38				
	**25,000	Scroll, Semi-hermetic	DO		EC	CD2	CB2				
			AWEF	1.92	1.96	2.30	2.30				
	54,000	Semi-hermetic	DO		EC	CD2	CB2				
			AWEF	2.25	2.31	2.57	2.58				
DC.L.O, <6,500 Btu/h	6,000	Scroll	DO		FHP	EC	CB2	FHPEV	CD2	VSCF	ASC
			AWEF	2.13	2.46	2.55	2.56	2.75	2.81	2.98	3.00
DC.L.O, ≥6,500 Btu/h	9,000	Scroll	DO		FHP	EC	FHPEV	CB2	CD2	VSCF	ASC
			AWEF	2.31	2.70	2.78	3.00	3.01	3.08	3.15	3.18
	*25,000	Scroll, Semi-hermetic	DO		FHP	EC	FHPEV	CB2	VSCF	ASC	CD2
			AWEF	2.22	2.60	2.67	2.87	2.94	2.95	2.98	3.06
	54,000	Semi-hermetic	DO		FHP	FHPEV	EC	VSCF	ASC	CB2	CD2
			AWEF	2.51	2.82	2.97	3.05	3.14	3.17	3.17	3.19
	72,000	Semi-hermetic	DO		FHP	FHPEV	EC	VSCF	ASC	CB2	CD2
			AWEF	2.49	2.80	2.98	3.06	3.15	3.18	3.18	3.19

* Design option abbreviations are as follows: ASC = Ambient sub-cooling; CB2 = Improved condenser fan blades; CD2 = Improved condenser coil; EC = Electronically commutated condenser fan motors; FHP = Floating head pressure; FHPEV = Floating head pressure with electronic expansion valve; VSCF = Variable speed condenser fans.

** As discussed in section IV.C.5.b, DOE aggregated the separate results for scroll and semi-hermetic compressors and created a single aggregated cost-efficiency curve in the engineering analysis for the 25,000 Btu/h nominal capacity.

TABLE IV–3—ENGINEERING ANALYSIS OUTPUT: CALCULATED AWEFS FOR UC CLASSES

Representative unit		As-tested AWEF with each Design Option (DO) added*				
Equipment class	Nominal Btu/h		Baseline	DO 1	DO 2	DO 3
UC.M	4,000	DO	....	MEF	EB2	VEF
		AWEF	6.45	7.75	7.91	9.02
	9,000	DO	....	MEF	EB2	VEF
		AWEF	7.46	8.74	8.89	9.92
	24,000	DO	....	MEF	VEF	EB2
		AWEF	8.57	9.74	10.64	10.75
UC.L, <15,500 Btu/h	4,000	DO	....	EB2	MEF	VEF
		AWEF	3.43	3.47	3.58	3.66
	9,000	DO	....	MEF	EB2	VEF
		AWEF	3.75	3.86	3.88	3.95
UC.L, ≥15,500 Btu/h	18,000	DO	....	MEF	EB2	VEF
		AWEF	3.94	4.05	4.08	4.15
	40,000	DO	....	MEF	EB2	VEF
		AWEF	4.06	4.20	4.23	4.32

9. Engineering Efficiency Levels

DOE selects efficiency levels for each equipment class. These levels form the basis of the potential standard levels that DOE considers in its analysis. As discussed in this preamble, DOE conducted a design-option-based engineering analysis for this rulemaking, in which AWEFs were calculated for specific designs incorporating groups of design options. However, these design-option-based AWEFs vary as a function of representative capacity due to multiple factors and are not generally suitable as the basis for standard levels. Hence, DOE selected engineering efficiency levels ("ELs") for each class that provide suitable candidate levels for consideration. The efficiency levels do not exactly match the calculated AWEFs at each representative capacity, but the candidate efficiency levels are meant to represent the range of efficiencies calculated for the individual representative capacities.

The selected efficiency levels for the equipment classes analyzed for this document are shown in Table IV–4. DOE divided the dedicated condensing classes into the same two classes initially considered in the 2014 Final Rule, except that the current classes are split based on actual net capacity rather than the 9,000 Btu/h nominal capacity used previously. (This is based on a re-evaluation of the analysis in light of new data indicating that nominal capacity and net capacity may be very different for a given system.) For the medium-temperature and low-temperature unit cooler classes, where the initial analysis had a single class covering the entire capacity range, for some of the efficiency levels for this NOPR, DOE considered a class split based on actual net capacity. DOE adopted this approach because the current analysis shows significant variation of efficiency at the lower capacity levels (the selected proposal has two classes for low-temperature unit coolers and one for medium-temperature).

The maximum technologically feasible level is represented by EL 3 for all classes. DOE represented these efficiency levels by either a single AWEF or an equation for the AWEF as a function of the net capacity. The ELs for each class are formulated such that they divide the gap in efficiency between the baseline and the maximum technologically feasible efficiency level into approximately equal intervals. The baseline level is generally represented by the lowest AWEF achieved by any representative system in the class, while the maximum technologically feasible level is represented by the highest AWEF achieved by any representative system in the class, rounded down to the nearest 0.05 Btu/W-h to account for uncertainty in the analysis.

TABLE IV–4—ENGINEERING EFFICIENCY LEVELS FOR EACH EQUIPMENT CLASS

Equipment class	AWEF			
	Baseline	EL 1	EL 2	EL 3
Dedicated Condensing System—Low, Indoor with a Net Capacity (q_net) of:				
<6,500 Btu/h	$5.030 \times 10^{-5} \times q\_net + 1.59$	$6.384 \times 10^{-5} \times q\_net + 1.67$	$7.737 \times 10^{-5} \times q\_net + 1.74$	$9.091 \times 10^{-5} \times q\_net + 1.81$
≥6,500 Btu/h	1.92	2.08	2.24	2.40
Dedicated Condensing System—Low, Outdoor with a Net Capacity (q_net) of:				
<6,500 Btu/h	$3.905 \times 10^{-5} \times q\_net + 1.97$	$4.778 \times 10^{-5} \times q\_net + 2.22$	$5.650 \times 10^{-5} \times q\_net + 2.47$	$6.522 \times 10^{-5} \times q\_net + 2.73$
≥6,500 Btu/h	2.22	2.53	2.84	3.15
Unit Cooler—Medium:				
<21,800 Btu/h	6.45	7.3	8.15	9
Unit Cooler—Low with a Net Capacity (q_net) of:				
<15,500 Btu/h	$2.499 \times 10^{-5} \times q\_net + 3.36$	$2.191 \times 10^{-5} \times q\_net + 3.54$	$1.883 \times 10^{-5} \times q\_net + 3.73$	$1.575 \times 10^{-5} \times q\_net + 3.91$
≥15,500 Btu/h	3.75	3.88	4.02	4.15

* Where q_net is net capacity as determined and certified pursuant to 10 CFR 431.304.

In two cases, DOE selected maximum-technology ELs whose AWEFs exceed the maximum AWEFs as calculated in the design-option engineering analysis (see Table IV–2) for one or more representative capacities. First, for low temperature unit coolers, the smaller representative capacities had lower maximum achievable AWEFs than the AWEF values obtained with the maximum technology (EL3) equation for this class. DOE notes that there is some uncertainty regarding the actual obtainable AWEFs for lower-capacity models of this class. The analysis is based on a ratio between actual capacity and nominal capacity that DOE developed based on testing and modeling of unit coolers that collectively suggest an increasing trend in the actual/nominal capacity ratio as nominal capacity increases (this analysis is described in section IV.C.5.a). However, there is some uncertainty in this analysis because of the limited number of tests for which data were available to DOE. If DOE had used a data regression approach assuming that the actual/nominal capacity ratio did not depend on capacity, the analyses for the 4,000 and 9,000 Btu/h nominal representative capacities would have shown that the selected maximum technology EL is achievable. Given the uncertainty in the analysis results and the fact that, during the December 15, 2015 Working Group negotiation meeting, the industry negotiating parties explicitly agreed to a standard level for small-capacity UC.L systems essentially equal to the selected maximum-technology level (EL3) for this class (see Docket No. EERE–2015–BT–STD–0016, AHRI, Public Meeting Transcript (December 15, 2015), No. 0060 at pp. 229–230), DOE believes that the selected EL 3 is technologically feasible.

Second, for dedicated refrigeration systems—low temperature, with a net capacity of ≥6,500 Btu/h, for both indoor and outdoor systems, the analysis for a system with a representative nominal capacity of 25,000 Btu/h indicates that the maximum achievable AWEFs are 2.30 for indoor systems and 3.06 for outdoor (see Table IV–2). These values are lower than the AWEF values obtained with the maximum technology (EL3) equation for this class. However, the AWEFs shown in Table IV–2 for 25,000 Btu/h nominal capacity units represent an aggregation of results developed separately for systems using either scroll or semi-hermetic compressors, which means that the listed AWEFs can be achieved by a system using either compressor type. The DOE analysis at this nominal capacity, when disaggregated by compressor type, shows that the AWEF values for EL 3 levels can be met at the 25,000 Btu/h nominal representative capacity with systems using semi-hermetic compressors (though not with systems using scroll compressors). Hence, DOE concludes that EL 3 is technologically feasible for these classes.

Although DOE observed a trend of AWEFs increasing with capacity across the representative units for the medium temperature unit cooler class, DOE is maintaining a single AWEF level for all sizes within that class due to the outcome of a sensitivity analysis that investigated efficiency trends of high capacity unit coolers. That sensitivity analysis, contained in appendix 5B of the TSD, showed that large unit coolers—*i.e.,* those with a capacity greater than approximately 60,000 Btu/h—tend to have disproportionately higher fan power (as a factor of net capacity) than the largest representative unit coolers DOE analyzed in this rulemaking. Particularly, DOE found that large-capacity medium-temperature unit coolers would most likely be unable to meet a higher standard (such as those exceeding EL 3) because their higher fan power per capacity would reduce their measured AWEF compared to the largest capacity unit analyzed (of 24,000 Btu/h nominal capacity). Larger unit coolers could be used with walk-in coolers of less than 3,000 square feet and thus are within the scope of this rulemaking. Consequently, based on the available information it reviewed and the corresponding analysis, DOE tentatively concludes that efficiency levels higher than EL 3 would not be technologically feasible for this class.

D. Markups Analysis

The markups analysis develops appropriate markups in the equipment distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. At each step in the distribution channel, companies mark up the price of the equipment to cover business costs and profit margin.

For this NOPR, DOE retained the distribution channels that were used in the 2014 final rule—(1) direct to customer sales, through national accounts or contractors; (2) refrigeration wholesalers to consumers; and (3) OEMs to consumers. The OEM channel primarily represents manufacturers of WICF refrigeration systems who may also install and sell entire WICF refrigeration units.

For each of the channels, DOE developed separate markups for baseline equipment (baseline markups) and the incremental cost of more-efficient equipment (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. DOE relied on data from the U.S. Census Bureau, the Heating, Air-conditioning & Refrigeration Distributors International (“HARDI”) industry trade group, and RSMeans[18] to estimate average baseline and incremental markups.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for WICF refrigeration systems.

Because the identified market channels are complex and their characterization required a number of assumptions, DOE seeks input on its analysis of market channels described in this preamble. This is identified as Issue 2 in section VII.E, “Issues on Which DOE Seeks Comment.”

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of the considered WICF refrigeration systems at different efficiencies in representative U.S. installations, and to assess the energy savings potential of increased WICF refrigeration system efficiency. The energy use analysis estimates the range of energy use of the considered WICF refrigeration systems in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

The estimates for the annual energy consumption of each analyzed representative refrigeration system (see section IV.C.2) were derived assuming that (1) the refrigeration system is sized such that it follows a specific daily duty cycle for a given number of hours per day at full-rated capacity, and (2) the refrigeration system produces no additional refrigeration effect for the remaining period of the 24-hour cycle. These assumptions are consistent with the present industry practice for sizing refrigeration systems. This methodology assumes that the refrigeration system is correctly paired with an envelope that generates a load profile such that the rated hourly capacity of the paired refrigeration system, operated for the given number of run hours per day, produces sufficient refrigeration to meet the daily refrigeration load of the envelope with a safety margin to meet contingency situations. Thus, the annual energy consumption estimates for the refrigeration system depend on the methodology adopted for sizing, the implied assumptions and the extent of oversizing.

The WICF equipment run-time hours that DOE used broadly follow the load profile assumptions of the industry test procedure for refrigeration systems—AHRI 1250–2009. As noted earlier, that protocol was incorporated into DOE's test procedure. 76 FR 33631 (June 9, 2011). For the NOPR analysis, DOE used a nominal run-time of 16 hours per day for coolers and 18 hours per day for freezers over a 24-hour period to calculate the capacity of a “perfectly”-sized refrigeration system at specified reference ambient temperatures of 95 °F and 90 °F for refrigeration systems with outdoor and indoor condensing units, respectively. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at p. 9) Nominal run-time hours for coolers and freezers were adjusted to account for equipment over-sizing safety margin and capacity mismatch factors. They were further adjusted to account for the change in net capacity from increased efficiency projected to occur in the standards case, and, in the case of outdoor equipment, variations in ambient temperature.

The WICF equipment run-time hours that DOE used broadly follow the load profile assumptions of the industry test procedure for refrigeration systems—AHRI 1250–2009. As noted earlier, that protocol was incorporated into DOE's test procedure. 76 FR 33631 (June 9, 2011). For the NOPR analysis, DOE used a nominal run-time of 16 hours per day for coolers and 18 hours per day for freezers over a 24-hour period to calculate the capacity of a “perfectly”-sized refrigeration system at specified reference ambient temperatures of 95 °F and 90 °F for refrigeration systems with outdoor and indoor condensing units, respectively. (Public Meeting October 1, 2015, p. 9) Nominal run-time hours for coolers and freezers were adjusted to account for equipment over-sizing safety margin and capacity mismatch factors. They were further adjusted to account for the change in net capacity from increased efficiency projected to occur in the standards case, and, in the case of outdoor equipment, variations in ambient temperature.

1. Oversize Factors

During the Working Group negotiations, Rheem indicated that the typical and widespread industry practice for sizing the refrigeration system is to calculate the daily heat load on the basis of a 24-hour cycle and divide by 16 hours of run-time for coolers and 18 hours of run-time for freezers. In the field, WICF refrigeration systems are sized to account for a “worst case scenario” need for refrigeration to prevent food spoilage, and as such are oversized by a safety margin. (Docket No. EERE–2015–BT–STD–0016, Rheem, Public Meeting Transcript (October 1, 2015), No. 0068 at pp. 12, 14) Based on discussions with purchasers of WICF refrigeration systems, DOE found that it is customary in the industry to add a 10 percent safety margin to the aggregate 24-hour load, resulting in 10 percent oversizing of the refrigeration system. The use of this 10 percent oversizing of the refrigeration system was presented to the Working Group and accepted without objection and incorporated into the NOPR analysis. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at pp. 8–16)

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[18] R.S. Means Company, Inc. *RSMeans Mechanical Cost Data*. 33rd edition. 2015. Kingston, MA.

Further, DOE recognized that an exact match for the calculated refrigeration system capacity may not be available for the refrigeration systems available in the market because most refrigeration systems are produced in discrete capacities. To account for this situation, DOE used the same approach as in the 2014 final rule. Namely, DOE applied a capacity mismatch factor of 10 percent to capture the inability to perfectly match the calculated WICF capacity with the capacity available in the market. This approach was presented to the Working Group and accepted without objection and incorporated into the NOPR analysis. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at pp. 8, 18)

The combined safety margin factor and capacity mismatch factor result in a total oversizing factor of 1.2. With the oversize factor applied, the run-time of the refrigeration system is reduced to 13.3 hours per day for coolers and 15 hours per day for freezers at full design point capacity.

2. Net Capacity Adjustment Factors

As in the 2014 final rule, DOE assumed that the heat loads to which WICF refrigeration systems are connected remain constant in the no new standards and standards cases. To account for changes in the net capacity of more efficient designs in the standard cases, DOE adjusted the run-time hours.

3. Temperature Adjustment Factors

As in the 2014 final rule, DOE assumed that indoor WICF refrigeration systems are operated at a steady-state ambient temperature of 90 °F. For these equipment classes, the run-time hours are only adjusted by the change in steady-state capacity as efficiency increases. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at p. 23)

As in the 2014 final rule, DOE assumed that outdoor WICF refrigeration system run-times to be a function of external ambient temperature. DOE adjusted the run-time hours for outdoor WICF refrigeration systems to account for the dependence of the steady-state capacity on external ambient temperature. External ambient temperatures were determined as regional histograms of annual weighted hourly temperatures. For these equipment, the run-time hours are adjusted by the fraction of heat load that would be removed at each temperature bin of the regional histogram. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at pp. 33–35)

These adjusted run-times were presented to the Working Group in detail for indoor and outdoor dedicated condensing equipment classes. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 20, 2015), No. 0066 at pp. 111–119) After reviewing DOE's run-time estimates, the CA–IOUs, along with an individual participating in the Working Group meetings, confirmed the reasonableness of DOE's estimates. (Docket No. EERE–2015–BT–STD–0016, CA IOUs, Public Meeting Transcript (November 4, 2015), No. 0065 at p. 190)

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for the considered WICF refrigeration systems covered by this analysis.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for the considered WICF refrigeration systems. The effect of energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the equipment.
- The payback period is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of the considered equipment in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

For each considered efficiency level in each equipment class, DOE calculated the LCC and PBP for a nationally representative set of WICF refrigeration systems. DOE used shipments data submitted by stakeholders to develop its sample. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 3, 2015), No. 0064 at pp. 119–120) The sample weights how the various WICF refrigeration system types and capacities are distributed over different commercial sub-sectors, geographic regions, and configurations of how the equipment is sold (either as a separate unit cooler, a separate condensing unit, or as a combined unit cooler and condensing unit pair matched at the time of installation). For each of these WICF refrigeration systems, DOE determined the energy consumption and the appropriate electricity price, enabling DOE to capture variations in WICF refrigeration system energy consumption and energy pricing.

Inputs to the calculation of total installed cost include the cost of the equipment—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, and discount rates. DOE created distributions of values for equipment lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and air compressor consumer sample. The model calculated the LCC and PBP for equipment at each efficiency level for 5,000 consumers per simulation run.

DOE calculated the LCC and PBP for all consumers of the considered WICF refrigeration systems as if each consumer were to purchase new equipment in the expected first full year of required compliance with the proposed standards. As discussed in section III.F, DOE currently anticipates a compliance date in the second half of 2019. Therefore, for purposes of its analysis, DOE used 2020 as the first full year of compliance with the standards for the WICF refrigeration systems under consideration in this proposal.

Table IV–5 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV–5—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Equipment Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast equipment costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy Use	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the stakeholder submitted data.
Energy Prices	Electricity: Marginal prices derived from EIA and EEI data.
Energy Price Trends	Based on *AEO 2015* price forecasts.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Assumed average lifetime of 12 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase air compressors. Primary data source was the Damodaran Online.
Compliance Date	Late 2019 (2020 for purposes of analysis).

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. System Boundaries

As discussed in section IV.C.5, participants during the Working Group meetings stated that the vast majority of WICF refrigeration equipment are sold as stand-alone components and installed either as a complete system in the field (field-paired) or as replacement components—*i.e.*, to replace either the unit cooler (UC-only) or condensing unit (CU-only). AHRI provided data to the Working Group indicating that over 90 percent of these WICF refrigeration equipment components are sold as stand-alone equipment with the remaining sold as manufacturer matched pairs (Docket No. EERE–2015–BT–STD–0016, AHRI, No. 0029). These data stand in contrast to the 2014 Final Rule, where DOE assumed in its analysis that all equipment was sold as manufacturer-matched pairs. Further, in section III.A DOE discusses its May 2014 update of the test procedure specifying that in instances where a complete walk-in refrigeration system consists of a unit cooler and condensing unit that are both sourced from separate manufacturers, each manufacturer is responsible for ensuring the compliance of its respective units. 79 FR 27388 (May 13, 2014). Based on the current market situation, the LCC analysis separately estimates the costs and benefits for equipment under the following system configuration scenarios: Field-paired systems,[19] condensing unit-only,[20] and unit cooler only.[21]

a. Field-Paired

Under the field-paired system configuration, DOE assumes that the unit cooler and condensing unit are purchased as stand-alone pieces of equipment and paired together in the field. Field-paired results were estimated for dedicated condensing, low-temperature equipment classes only, which include dedicated condensing, low-temperature outdoor (DC.L.O) and dedicated condensing, low-temperature indoor (DC.L.I) equipment classes. Medium-temperature dedicated condensing equipment classes were not analyzed as field-paired equipment because the condensing units are covered equipment under the 2014 final rule and fall outside the scope of this analysis. Also, unit coolers used in multiplex condensing applications were not analyzed as field-paired equipment because the scope of these equipment classes only covers the unit cooler portion of the walk-in system.

b. Condensing Unit-Only

Under the condensing unit-only system configuration, DOE assumes that the condensing unit is purchased as a stand-alone piece of equipment and installed with a pre-existing baseline unit cooler. Condensing unit-only results were estimated for low-temperature, dedicated condensing equipment classes only, which includes DC.L.O and DC.L.I equipment classes.

c. Unit Cooler Only

Under the unit cooler-only system configuration, DOE assumes that the unit cooler is purchased as a stand-alone piece of equipment and installed with a pre-existing baseline condensing unit. Unit cooler-only results were estimated for all low-temperature condensing equipment classes (DC.L.O, DC.L.I, and UC.L). For the medium temperature unit coolers belonging to the UC.M equipment class, DOE estimated the impact of unit cooler design options on multiplex applications (referred to as UC.M in the tables) and on applications where the unit cooler is installed with a pre-existing medium temperature dedicated condensing unit. For the medium temperature dedicated applications DOE assumed that the condensing unit meets the standards adopted in the 2014 Final Rule. In the tables, the installations with a pre-existing medium temperature dedicated condensing unit are referred to as UC.M–DC.M.I application and UC.M–DC.M.O applications.

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[19] Paired dedicated systems are described in section IV.C.5.c.

[20] Condensing units are described in section IV.C.5.b.

[21] Unit coolers are described in section IV.C.5.a.

As discussed in section III.A, DOE established a rating method for walk-in refrigeration system components distributed individually; that is, unit coolers sold by themselves are tested and rated with the multiplex condensing system test, while condensing units sold by themselves are tested and rated with the dedicated condensing system test. DOE reflected this approach by aggregating unit cooler-only results within the low- and medium-temperature multiplex equipment classes. The low-temperature multiplex equipment class (UC.L) is an aggregation of results of all unit coolers attached to DC.L.O, DC.L.I, and low temperature multiplex condensing systems. The medium-temperature multiplex equipment class (UC.M) is an aggregation of results of all unit coolers in all application types.

d. System Boundary and Equipment Class Weights

Within each equipment class, DOE examined several different nominal capacities (see section IV.A.1). The life-cycle costs and benefits for each of these capacities was weighted in the results for each equipment class shown in section V based on the respective market share of each equipment class and capacity in the customer sample mentioned in this preamble. The system boundaries and customer sample weights (based on share of total sales of the considered WICF refrigeration equipment) are shown in Table IV–6.

TABLE IV–6—SYSTEM BOUNDARIES AND CUSTOMER SAMPLE WEIGHTS

Equipment class application	Reported as equipment class	Capacity (kBtu/h)	System boundary	Weight (%)
DC.L.I	DC.L.I	6	CU-Only	1.2
DC.L.I	DC.L.I	9	CU-Only	0.4
DC.L.I	DC.L.I	25	CU-Only	0.1
DC.L.I	DC.L.I	54	CU-Only	0.0
DC.L.O	DC.L.O	6	CU-Only	0.6
DC.L.O	DC.L.O	9	CU-Only	1.1
DC.L.O	DC.L.O	25	CU-Only	0.4
DC.L.O	DC.L.O	54	CU-Only	0.1
DC.L.O	DC.L.O	72	CU-Only	0.1
DC.L.I	DC.L.I	6	Field-Paired	5.4
DC.L.I	DC.L.I	9	Field-Paired	2.0
DC.L.I	DC.L.I	25	Field-Paired	0.6
DC.L.I	DC.L.I	54	Field-Paired	0.2
DC.L.O	DC.L.O	6	Field-Paired	2.9
DC.L.O	DC.L.O	9	Field-Paired	5.1
DC.L.O	DC.L.O	25	Field-Paired	1.7
DC.L.O	DC.L.O	54	Field-Paired	0.3
DC.L.O	DC.L.O	72	Field-Paired	0.4
DC.L.I	UC.L	6	UC-Only	1.2
DC.L.I	UC.L	9	UC-Only	0.4
DC.L.I	UC.L	25	UC-Only	0.1
DC.L.I	UC.L	54	UC-Only	0.0
DC.L.O	UC.L	6	UC-Only	0.6
DC.L.O	UC.L	9	UC-Only	1.1
DC.L.O	UC.L	25	UC-Only	0.4
DC.L.O	UC.L	54	UC-Only	0.1
DC.L.O	UC.L	72	UC-Only	0.1
UC.M—DC.M.I	UC.M	9	UC-Only	15.5
UC.M—DC.M.I	UC.M	24	UC-Only	4.6
UC.M—DC.M.O	UC.M	9	UC-Only	24.0
UC.M—DC.M.O	UC.M	24	UC-Only	11.7
UC.L	UC.L	4	UC-Only	0.8
UC.L	UC.L	9	UC-Only	3.0
UC.L	UC.L	18	UC-Only	2.0
UC.L	UC.L	40	UC-Only	0.7
UC.M	UC.M	4	UC-Only	1.4
UC.M	UC.M	9	UC-Only	7.9
UC.M	UC.M	24	UC-Only	2.0

2. Equipment Cost

To calculate consumer equipment costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described earlier (along with sales taxes). DOE used different markups for baseline equipment and higher-efficiency equipment because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency equipment.

To develop an equipment price trend for WICFs, DOE derived an inflation-adjusted index of the producer price index ("PPI") for commercial refrigerators and related equipment from 1978 to 2014.[22] These data, which represent the closest approximation to the refrigeration equipment at issue in this proposal, indicate no clear trend, showing increases and decreases over time. Because the observed data do not provide a firm basis for projecting future price trends for WICF refrigeration equipment, DOE used a constant price assumption as the default trend to project future WICF refrigeration system prices. Thus, prices projected for the LCC and PBP analysis are equal to the 2015 values for each efficiency level in each equipment class.

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[22] Bureau of Labor Statistics, *Producer Price Index Industry Data*, Series: PCU3334153334153.

DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) walk-in prices. This is identified as Issue 3 in section VII.E, "Issues on Which DOE Seeks Comment."

3. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. DOE used data from *RS Means Mechanical Cost Data 2015*[23] to estimate the baseline installation cost for WICF refrigeration systems. Installation costs associated with hot gas defrost design options for low-temperature dedicated condensing and multiplex condensing equipment were discussed at length during the Working Group meetings. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 1, 2015), No. 0068 at p. 54; Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 36–37, 49–50, 187)

However, the Working Group recommended that DOE remove the hot gas defrost from the test procedure (Docket No. EERE–2015–BT–STD–0016, Term Sheet: Recommendation #3 (December 15, 2015), No. 0056 at p. 2)

Consequently, DOE also removed hot gas defrost as a design option, as discussed in section VI.B.1.

DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in installation costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. This is identified as Issue 4 in section VII.E, "Issues on Which DOE Seeks Comment."

4. Annual Energy Use

DOE typically considers the impact of a rebound effect in its energy use calculation. A rebound effect occurs when users operate higher efficiency equipment more frequently and/or for longer durations, thus offsetting estimated energy savings. DOE did not incorporate a rebound factor for WICF refrigeration equipment because it is operated 24 hours a day, and therefore there is limited potential for a rebound effect. Additionally, DOE requested comment from the Working Group if there was any evidence contradicting DOE's assumption to not incorporate a rebound factor, (Docket No. EERE–2015–BT–STD–0016, DOE, Public Meeting Transcript (November 20, 2015), No. 0066 at pp. 92) to which Hussmann responded that DOE's assumption was reasonable. (Docket No. EERE–2015–BT–STD–0016, Hussmann, Public Meeting Transcript (November 20, 2015), No. 0066 at pp. 92)

DOE requests comment on its assumption to not consider the impact of a rebound effect for the WICF refrigeration system classes covered in this NOPR. Further, DOE requests any data or sources of literature regarding the magnitude of the rebound effect for the covered WICF refrigeration equipment. This is identified as Issue 5 in section VII.E, "Issues on Which DOE Seeks Comment."

For each sampled WICF refrigeration system, DOE determined the energy consumption at different efficiency levels using the approach described in section IV.E.

5. Energy Prices and Energy Price Projections

DOE derived regional marginal non-residential (*i.e.,* commercial and industrial) electricity prices using data from EIA's Form EIA–861 database (based on the agency's "Annual Electric Power Industry Report"),[24] EEI Typical Bills and Average Rates Reports,[25] and information from utility tariffs for each of 9 geographic U.S. Census Divisions.[26] Electricity tariffs for non-residential consumers generally incorporate demand charges. The presence of demand charges means that two consumers with the same monthly electricity consumption may have very different bills, depending on their peak demand. For the NOPR analysis DOE derived marginal electricity prices to estimate the impact of demand charges for consumers of WICF refrigeration systems. The methodology used to calculate the marginal electricity rates can be found in appendix 8A of the NOPR TSD.

To estimate energy prices in future years, DOE multiplied the average and marginal regional electricity prices by the forecast of annual change in national-average commercial electricity price in the Reference case from *AEO 2015,* which has an end year of 2040.[27] To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040.

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing equipment components that have failed in an appliance. Industry participants from the Working Group indicated that maintenance and repair costs do not change with increased WICF refrigeration system efficiency. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (October 15, 2015), No. 0062 at pp. 38, 53) Accordingly, DOE did not include these costs in its supporting analysis.

DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in maintenance and repair costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. This is identified as Issue 6 in section VII.E, "Issues on Which DOE Seeks Comment."

7. Equipment Lifetime

For this analysis, DOE continued to use an estimated average lifetime of 10.5 years for the WICF refrigeration systems examined in this rulemaking, with a minimum and maximum of 2 and 25 years, respectively, that it used in the June, 2014 final rule (79 FR 32050). DOE reflects the uncertainty of equipment lifetimes in the LCC analysis for equipment components by using probability distributions. DOE presented this assumption to the Working Group during the October 15, 2015 public meeting and invited comment. DOE received no comments on WICF refrigeration system lifetimes. (Docket No. EERE–2015–BT–STD–0016, DOE, Public Meeting Transcript (October 15, 2015), No. 0062 at p. 41)

DOE seeks comment on these minimum, average, and maximum equipment lifetimes, and whether or not they are appropriate for all equipment classes and capacities. This is identified as Issue 7 in section VII.E, "Issues on Which DOE Seeks Comment."

8. Discount Rates

In calculating the LCC, DOE applies discount rates to estimate the present value of future operating costs to the consumers of WICF refrigeration systems. DOE derived the discount rates for the NOPR analysis by estimating the average cost of capital for a large number of companies similar to those that could purchase WICF refrigeration systems. This approach resulted in a distribution of potential consumer discount rates from which DOE sampled in the LCC analysis. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the company of equity and debt financing.

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[23] Reed Construction Data, RSMeans Mechanical Cost Data 2015 Book, 2015.

[24] Available at: *www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[25] Edison Electric Institute. *Typical Bills and Average Rates Report.* Winter 2014 published April 2014, Summer 2014 published October 2014: Washington, DC (Last accessed June 2, 2015.) *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

[26] U.S. Census Bureau, Census Divisions and Census Regions *https://www.census.gov/geo/reference/gtc/gtc_census_divreg.html* (Last accessed Febuary 2, 2016).

[27] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2015 with Projections to 2040* (Available at: *http://www.eia.gov/forecasts/aeo/*).

DOE estimated the cost of equity financing by using the Capital Asset Pricing Model ("CAPM").[28] The CAPM assumes that the cost of equity is proportional to the amount of systematic risk associated with a company. Data for deriving the cost of equity and debt financing primarily came from Damodaran Online, which is a widely used source of information about company debt and equity financing for most types of firms.[29]

More details regarding DOE's estimates of consumer discount rates are provided in chapter 8 of the NOPR TSD.

9. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of equipment efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards). In the case of WICF refrigeration systems, DOE was unable to find usable data on the distribution of efficiencies in the market, nor was information offered by participants during the Working Group meetings. For the NOPR analysis, the efficiency distribution in the no-new-standards case assumes that 100 percent of WICF refrigeration equipment is at the baseline efficiency level.

DOE requests comment on its assumption that all WICF refrigeration systems covered by this rulemaking would be at the baseline efficiency level in the compliance year. This is identified as Issue 8 in section VII.E, "Issues on Which DOE Seeks Comment."

10. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient equipment, compared to baseline equipment, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the equipment mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the payback period (*i.e.* PBP) calculation for each efficiency level are the change in total installed cost of the equipment and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed in light of the shorter time-frame involved.

As noted in this preamble, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing equipment complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the proposed standards would be required.

G. Shipments Analysis

DOE uses forecasts of annual equipment shipments to calculate the national impacts of the proposed energy conservation standards on energy use, NPV, and future manufacturer cash-flows.[30] The shipments model takes an accounting approach, tracking the vintage of units in the stock and market shares of each equipment class. The model uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In DOE's shipments model, shipments of the considered WICF refrigeration systems are driven by new purchases and stock replacements due to failures. Equipment failure rates are related to equipment lifetimes described in section IV.F.7. New equipment purchases are driven by growth in commercial floor space.

DOE initialized its stock and shipments model based on shipments data provided by stakeholders during the Working Group meetings. These data showed that for low-temperature, dedicated condensing equipment classes, 5 percent of shipments are manufacturer-matched condensing units and unit coolers, and the remaining 95 percent is sold as individual condensing units or unit coolers which were then matched by the installer in the field. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 3, 2015), No. 0064 at p. 120; Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 20, 2015), No. 0066 at pp. 83–84) For medium and low-temperature unit coolers, 82 percent are paired with dedicated condensing systems, and the remaining 18 percent are paired with multiplex systems; 70 percent of unit coolers are medium temperature, and 30 percent are low temperature. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 4, 2015), No. 0065 at p. 117)

DOE assumed that shipments of new equipment would increase over time at the rate of growth of commercial floor space projected in *AEO 2015*. Because data on historic trends in market shares of WICF equipment classes and capacities were lacking, DOE took a conservative approach and assumed that they would remain constant over time. ((See November 20, 2015 Public Meeting Presentation, slide 24, available in Docket No. EERE–2015–BT–STD–0016, No. 0042, at p. 24)

DOE seeks comment on the share of equipment sold as individual components versus the share of equipment sold as manufacturer matched equipment. This is identified as Issue 9 in section VII.E, "Issues on Which DOE Seeks Comment."

H. National Impact Analysis

The NIA assesses the national energy savings (*i.e.* NES) and the net present value (*i.e.* NPV) from a national perspective of total consumer costs and savings that would be expected to result from the proposed standards at specific efficiency levels.[31] ("Consumer" in this context refers to consumers of the equipment being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[32] For the present analysis, DOE forecasted the energy savings, operating cost savings, equipment costs, and NPV of consumer benefits over the lifetime of WICF refrigeration systems sold from 2020 through 2049.[33]

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[28] Harris, R.S. *Applying the Capital Asset Pricing Model.* UVA–F–1456. Available at SSRN: *http://ssrn.com/abstract=909893.*

[29] Damodaran Online, *The Data Page: Cost of Capital by Industry Sector,* (2004–2013) (Available at: *http://pages.stern.nyu.edu/~adamodar/*).

[30] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are not readily available for DOE to examine. In general, one would expect a close correspondence between shipments and sales in light of their direct relationship with each other.

[31] The NIA accounts for impacts in the 50 States and U.S. territories.

DOE evaluates the impacts of the proposed standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each equipment class in the absence of the proposed energy conservation standards. DOE compares the no-new-standards case with a characterization of the market for each equipment class if DOE adopts amended or new standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of equipment with efficiencies greater than the standard.

Table IV–7 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV–7—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	Late 2019. First full year of analysis is 2020.
Efficiency Trends	No-new-standards case: None. Standards cases: None.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Does not change with efficiency level. Incorporates projection of future equipment prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	Site-to-Primary: A time-series conversion factor based on *AEO 2015.* FFC: Utilizes data and projections published in *AEO 2015.*
Discount Rate	Three and seven percent.
Present Year	2015.

Because data on trends in efficiency for the considered WICF refrigeration systems are lacking, DOE took a conservative approach and assumed that no change in efficiency would occur over the shipments projection period in the no-new-standards case. (Docket No. EERE–2015–BT–STD–0016, various parties, Public Meeting Transcript (November 20, 2015), No. 0066 at pp. 83–84)

DOE requests comment on its assumption that the WICF refrigeration system efficiency of the classes covered in this proposal would remain unchanged over time in the absence of adopting the proposed standards. This is identified as Issue 10 in section VII.E, "Issues on Which DOE Seeks Comment."

1. National Energy Savings

The NES analysis compares the projected national energy consumption of the considered equipment between each potential standards case (TSL) and the no-new-standards case. DOE calculated the annual national energy consumption by multiplying the number of units (stock) of each equipment (by vintage or age) by the unit energy consumption (also by vintage). DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015.* Cumulative energy savings are the sum of the NES for each year in which equipment purchased in 2020–2049 continues to operate.

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System ("NEMS") is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector[34] that EIA uses to prepare its *Annual Energy Outlook.* The approach used for deriving FFC measures of energy use and emissions is described in appendix 10A of the NOPR TSD.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of equipment shipped during the forecast period.

As discussed in section IV.F.1 of this proposed rule, DOE used a constant price trend for WICF refrigeration systems. DOE applied the same trend to forecast prices for each equipment class at each considered efficiency level. DOE's projection of equipment prices is discussed in appendix 10B of the NOPR TSD.

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[32] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

[33] Because the anticipated compliance date is in late 2019, for analytical purposes DOE used 2020 as the first full year of compliance.

[34] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different equipment price forecasts on the consumer NPV for the considered TSLs for the considered WICF refrigeration systems. In addition to the default price trend, DOE considered one equipment price sensitivity case in which prices increase and one in which prices decrease. The derivation of these price trends and the results of the sensitivity cases are described in appendix 10B of the NOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the regional energy prices by the forecast of annual national-average commercial electricity price changes in the Reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10B of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget ("OMB") to Federal agencies on the development of regulatory analysis.[35] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of the proposed standards on commercial consumers, DOE evaluates the impact on identifiable groups (*i.e.,* subgroups) of consumers that may be disproportionately affected. Small businesses typically face a higher cost of capital, which could make it more likely that they would be disadvantaged by a requirement to purchase higher efficiency equipment.

DOE estimated the impacts on the small business customer subgroup using the LCC model. To account for a higher cost of capital, the discount rate was increased by applying a small firm premium to the cost of capital.[36] In addition, electricity prices associated with different types of small businesses were used in the subgroup analysis.[37] Apart from these changes, all other inputs for the subgroup analysis are the same as those in the LCC analysis. Details of the data used for the subgroup analysis and results are presented in chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Definition of Manufacturer

A manufacturer of a walk-in cooler or walk-in freezer is any person who: (1) Manufactures a component of a walk-in cooler or walk-in freezer that affects energy consumption, including, but not limited to, refrigeration, doors, lights, windows, or walls; or (2) manufactures or assembles the complete walk-in cooler or walk-in freezer. 10 CFR 431.302. DOE requires a manufacturer of a walk-in component to certify the compliance of the components it manufactures. This document proposes energy conservation standards for seven classes of refrigeration equipment which are components of complete walk-in coolers and walk-in freezers. DOE provides a qualitative and quantitative analysis on the potential impacts of the proposed rule on the affected WICF refrigeration manufacturers. The results are presented in sections V.B.2.a through V.B.2.e. This document does not set new or amended energy conservation standards in terms of the performance of the complete walk-in cooler or walk-in freezer and, in DOE's view, this proposal would not create any significant burdens on manufacturers who assemble the complete walk-in cooler or freezer. DOE provides a qualitative review of the potential impacts on those manufacturers that assemble complete walk-ins in section V.B.2.f.

2. Overview of WICF Refrigeration Manufacturer Analysis

DOE performed an MIA to estimate the financial impacts of the proposed energy conservation standards on manufacturers of the seven WICF refrigeration system equipment classes being analyzed, and to estimate the potential impacts of such standards on cash-flow and industry valuation. The MIA also has qualitative aspects and seeks to determine how the proposed energy conservation standards might affect competition, production capacity, and overall cumulative regulatory burden for manufacturers. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (*i.e.* GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, equipment shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant equipment. The key GRIM outputs are the INPV, which is the sum of industry annual cash-flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV between a no-new-standards case and the various trial standards cases (TSLs). To capture the uncertainty relating to manufacturer pricing strategy following the adoption of the proposed standards, the GRIM estimates a range of possible impacts under two markup scenarios. DOE notes that the INPV estimated by the GRIM is reflective of industry value derived from the seven equipment classes being analyzed. The model does not capture the revenue from equipment falling outside the scope of this rulemaking.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, and the cumulative impact of other Federal regulations. The complete MIA is outlined in chapter 12 of the NOPR TSD.

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[35] United States Office of Management and Budget. Circular A–4: Regulatory Analysis, (Sept. 17, 2003), section E. (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

[36] See chapter 8 of the NOPR TSD for a more detailed discussion of discount rates.

[37] Small businesses tend to face higher electricity prices than the average WICF users.

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the impacts of an energy conservation standard on manufacturers of WICF refrigeration systems. In general, more-stringent energy conservation standards can affect manufacturer cash-flow in three distinct ways: (1) By creating a need for increased investment; (2) by raising production costs per unit; and (3) by altering revenue due to higher per-unit prices and possible changes in sales volumes.

In Phase 3 of the MIA, DOE used information from the Working Group negotiations to update key inputs to GRIM to better reflect the industry. Updates include changes to the engineering inputs and shipments model.

As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by the proposed standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one manufacturer subgroup for which average cost assumptions may not hold: small businesses.

To identify small businesses for this analysis, DOE applied the size standards published by the Small Business Administration (“SBA”) to determine whether a company is considered a small business. (65 FR 30840, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (September 5, 2000); and codified at 13 CFR part 121.) To be categorized as a small business manufacturer of WICF refrigeration systems under North American Industry Classification System (“NAICS”) codes 333415 (“Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing”), a WICF refrigeration systems manufacturer and its affiliates may employ a maximum of 1,250 employees. The 1,250-employee threshold includes all employees in a business' parent company and any other subsidiaries. Using this classification in conjunction with a search of industry databases and the SBA member directory, DOE identified two manufacturers of WICF refrigeration systems that qualify as small businesses.

The WICF refrigeration systems manufacturer subgroup analysis for the seven analyzed equipment classes is discussed in greater detail in chapter 12 of the NOPR TSD and in section VI.A of this document.

3. GRIM Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash-flows over time due to new or amended energy conservation standards. These changes in cash-flows result in either a higher or lower INPV for the standards case compared to the no-new standards case. The GRIM analysis uses a standard annual cash-flow analysis that incorporates MPCs, manufacturer markups, shipments, and industry financial information as inputs. It then models changes in MPCs, investments, and manufacturer margins that may result from analyzed proposed energy conservation standards. The GRIM uses these inputs to calculate a series of annual cash-flows beginning with the base year of the analysis, 2016, and continuing to 2049. DOE computes INPV by summing the stream of discounted annual cash-flows during the analysis period. The GRIM analysis for this proposal focuses on manufacturer impacts with respect to the seven covered refrigeration equipment classes. DOE used a real discount rate of 10.2 percent for WICF refrigeration manufacturers. The major GRIM inputs are described in detail in the following sections.

a. Manufacturer Production Costs

Manufacturing a higher-efficiency equipment is typically more expensive than manufacturing a baseline equipment due to the use of more complex and expensive components. The increases in the MPCs of the analyzed equipment can affect the revenues, gross margins, and cash-flow of the industry, making these equipment costs key inputs for the GRIM and the MIA.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of this NOPR TSD. DOE used information from its teardown analysis, described in section IV.C.4 to disaggregate the MPCs into material, labor, and overhead costs. To calculate the MPCs for equipment above the baseline, DOE added incremental material, labor, overhead costs from the engineering cost-efficiency curves to the baseline MPCs. These cost breakdowns and equipment markups were validated with manufacturers during manufacturer interviews conducted for the June 2014 final rule and further revised based on feedback from the Working Group.

b. Shipment Scenarios

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by equipment class. For the no-new standards case analysis, the GRIM uses the NIA shipment forecasts from 2016, the base year for the MIA analysis, to 2049, the last year of the analysis period. For the standards case shipment forecast, the GRIM uses the NIA standards case shipment forecasts. The NIA assumes zero elasticity in demand as explained in section IV.G and in chapter 9 of the TSD.

If demand elasticity were not zero, there would be a small drop in shipments due to some purchasers electing to repair rather than replace failing equipment. However, as this equipment is required for business operations, the total number of units in the stock must remain constant. The net effect of demand elasticity is therefore to delay the purchase of new equipment, which has a very limited impact on the national impacts estimates. With no elasticity, the total number of shipments per year in the standards case is equal to the total shipments per year in the no-new standards case. DOE assumed that equipment efficiencies in the no-new standards case that did not meet the standard under consideration would “roll up” to meet the new standard in the compliance year.

c. Capital and Product Conversion Costs

New energy conservation standards will cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. For the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make equipment designs comply with a new or amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new equipment designs can be fabricated and assembled.

To evaluate the level of conversion costs the industry would likely incur to comply with energy conservation standards, DOE used the data gathered in support of the June 2014 final rule. (79 FR at 32091–32092) The supporting data relied on manufacturer comments and information derived from the equipment teardown analysis and engineering model. DOE also incorporated feedback received during the ASRAC negotiations, which included updated conversion costs to better reflect changes in the test procedure, design options and design option ordering, the dollar year, and the competitive landscape for walk-in refrigeration systems.

In general, the analysis assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with a new or amended standard. The investment figures used in the GRIM can be found in Table IV–8 of this document. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the final rule TSD.

TABLE IV–8—INDUSTRY PRODUCT AND CAPITAL CONVERSION COSTS PER TRIAL STANDARD LEVEL

	Trial standard level		
	1	2	3
Product Conversion Costs (2015$ MM)	2.2	4.8	11.3
Capital Conversion Costs (2015$ MM)		2.3	4.9

Capital conversion costs are driven by investments related to larger condenser coils. DOE estimated that four manufacturers, produce their own condenser coils, which requires an estimated total investment of $1.0 million per manufacturer. The remainder of the capital conversion costs is attributed to the ambient subcooling design option, which requires an estimated investment of $100,000 per manufacturer.

DOE's engineering analysis suggests that many efficiency levels can be reached through the incorporation of more efficient components. Many of these changes are component swaps that do not require extensive R&D or redesign. DOE estimated product conversion costs of $20,000 per manufacturers for component swaps. For improved evaporator fan blades, additional R&D effort may be required to account for proper airflow within the cabinet and across the heat exchanger. DOE estimates product conversion costs to be $50,000 per manufacturer per equipment class. Chapter 12 of the NOPR TSD provides further details on the methodology that was used to estimate conversion costs.

DOE seeks additional information on industry capital and product conversion costs of compliance associated with the new standards for WICF refrigeration systems proposed in this document. This is identified as Issue 11 in section VII.E, "Issues on Which DOE Seeks Comment."

d. Manufacturer Markup Scenarios

As discussed in this preamble, MSPs include direct manufacturing production costs (*i.e.*, labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis and then added the cost of shipping. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case manufacturer markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new or amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario and (2) a preservation of operating profit markup scenario. These scenarios lead to different manufacturer markup values that, when applied to the inputted MPCs, result in varying revenue and cash-flow impacts. These markup scenarios are consistent with the scenarios modeled in the 2014 final rule for walk-ins.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform "gross margin percentage" markup across all efficiency levels. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly-available financial information for walk-in manufacturers, submitted comments, and information obtained during manufacturer interviews from the June 2014 final rule, DOE assumed the non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.35. This markup is consistent with the one DOE assumed in the engineering analysis (see section IV.C.4.d). Manufacturers have indicated that it would be optimistic for DOE to assume that, as manufacturer production costs increase in response to an energy conservation standard, manufacturers would be able to maintain the same gross margin percentage markup. Therefore, DOE assumes that this scenario represents a high bound to industry profitability under an energy conservation standard.

The preservation of operating profit markup scenario assumes that manufacturers are able to maintain only the no-new standards case total operating profit in absolute dollars in the standards cases, despite higher equipment costs and investment. The no-new standards case total operating profit is derived from marking up the cost of goods sold for each equipment by the preservation of gross margin markup. In the standards cases for the preservation of operating profit markup scenario, DOE adjusted the WICF manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards cases in the year after the compliance date of the proposed WICF refrigeration system standards as in the no-new standards case. Under this scenario, while manufacturers are not able to yield additional operating profit from higher production costs and the investments that are required to comply with the proposed WICF refrigeration system energy conservation standards, they are able to maintain the same operating profit in the standards case that was earned in the no-new standards case.

DOE requests comment on the appropriateness of assuming a constant manufacturer markup of 1.35 across all equipment classes and efficiency levels. This is identified as Issue 12 in section VII.E, "Issues on Which DOE Seeks Comment."

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. For the considered WICF refrigeration systems in this NOPR, DOE does not expect emissions to increase from the manufacturing of new equipment. As discussed in section IV.G, the number of units that are manufactured and shipped is not expected to change. Further, neither the design process nor installation processes are expected to generate emissions. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015,* as described in section IV.M. The methodology is described in chapter 13 and chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors from the EPA's GHG Emissions Factors Hub.[38] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[39] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[40] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[41] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[42] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[43] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015,* so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards and does not affect the outcome of the cost-benefit analysis.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[44] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

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[38] Available at: *http://www2.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.*

[39] IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[40] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[41] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[42] *See EPA* v. *EME Homer City Generation,* 134 S. Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[43] See *Georgia* v. *EPA,* Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

[44] DOE notes that the Supreme Court recently determined that EPA erred by not considering costs in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units is appropriate. See *Michigan* v. *EPA* (Case No. 14–46, 2015). The Supreme Court did not vacate the MATS rule, and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, the Court's decision does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[45] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this NOPR.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[46] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Although any numerical estimate of the benefits of reducing carbon dioxide emissions is subject to some uncertainty, that does not relieve DOE of its obligation to attempt to quantify such benefits and consider them in its cost-benefit analysis. Moreover, the interagency group's SCC estimates are well supported by the existing scientific and economic literature. As a result, DOE has relied on the interagency group's SCC estimates in quantifying the social benefits of reducing CO_2 emissions. Specifically, DOE estimated the benefits from reduced emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The present value of the benefits are then calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the current SCC values reflect the interagency group's best assessment, based on current data, of the societal effect of CO_2 emissions. The interagency group is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop harmonized SCC estimates for use in regulatory analysis. The results of this preliminary effort were used in the Regulatory Impact Analyses of several proposed and final rules from EPA and DOE.

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[45] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[46] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[47] although preference is given to consideration of the global benefits of reducing CO_2 emissions.[48] Table IV–9 presents the values in the 2010 interagency group report,[49] which is reproduced in appendix 16A of the NOPR TSD.

TABLE IV–9—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency Working Group (revised July 2015).[50] Table IV–10 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in appendix 16B of the NOPR TSD, which contains the July 2015 report. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

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[47] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[48] As discussed in appendix 16A of the NOPR TSD, the climate change problem is highly unusual in at least two respects. First, it involves a global externality: Emissions of most greenhouse gases contribute to damages around the world even when they are emitted in the United States. Consequently, to address the global nature of the problem, the SCC must incorporate the full (global) damages caused by domestic GHG emissions. Second, climate change presents a problem that the United States alone cannot solve. Even if the United States were to reduce its greenhouse gas emissions to zero, that step would be far from enough to avoid substantial climate change. Other countries would also need to take action to reduce emissions if significant changes in the global climate are to be avoided. Emphasizing the need for a global solution to a global problem, the United States has been actively involved in seeking international agreements to reduce emissions and in encouraging other nations, including emerging major economies, to take significant steps to reduce emissions. When these considerations are taken as a whole, the interagency group concluded that a global measure of the benefits from reducing U.S. emissions is preferable.

[49] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[50] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

TABLE IV–10—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[51]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2015$ using the implicit price deflator for gross domestic product ("GDP") from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.4, $40.6, $63.2, and $118 per metric ton avoided (values expressed in 2015$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards.[52] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 using discount rates of 3 percent and 7 percent; these values are presented in appendix 16C of the NOPR TSD. DOE primarily relied on the low estimates to be conservative.[53] DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030. DOE developed values specific to the end-use category for WICFs using a method described in appendix 16C of the NOPR TSD.

DOE multiplied the emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of the proposed energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015.* NEMS produces the AEO Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

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[51] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[52] Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al., Order in Pending Case, 577 U.S.* ____ (2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan.

[53] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits are primarily based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2012), the values would be nearly two-and-a-half times larger. (See chapter 16 of the NOPR TSD for further description of the studies mentioned.)

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from the proposed energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur from shifts in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new equipment to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's BLS,[54] which regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[55] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (''ImSET'').[56] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes (2020), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for the considered WICF refrigeration systems. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for the considered WICF refrigeration systems, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of three TSLs for the considered WICF refrigeration systems. These TSLs were developed by combining specific efficiency levels for each of the equipment classes analyzed by DOE. (Efficiency levels for each class are described in section IV.C.9.) DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

TSL 3 represents the maximum technologically feasible level and the proposed energy conservation standard that was negotiated by, and unanimously agreed on by the Working Group (Term Sheet at EERE–2015–BT–STD–0016–0056, recommendation #5). TSLs 1 and 2 are direct representations of efficiency levels 1 and 2. Table IV–1 shows the mapping of minimum AWEF values for each equipment class and nominal capacity to each TSL.

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[54] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[55] See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), U.S. Department of Commerce (1992).

[56] J.M. Roop, M.J. Scott, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

TABLE V–1—MAPPING OF AWEF TO TRIAL STANDARD LEVELS

Equipment component	Equipment class	Nominal capacity Btu/hr	Trial standard level		
			1	2	3
Condensing Unit	DC.L.I	6,000	1.94	2.10	2.24
		9,000	2.05	2.24	2.40
		25,000	2.08	2.24	2.40
		54,000	2.08	2.24	2.40
	DC.L.O	6,000	2.42	2.71	3.02
		9,000	2.50	2.80	3.14
		25,000	2.53	2.84	3.15
		54,000	2.53	2.84	3.15
		72,000	2.53	2.84	3.15
Unit Cooler	UC.M	4,000	7.30	8.15	9.00
		9,000	7.30	8.15	9.00
		24,000	7.30	8.15	9.00
	UC.L	4,000	3.61	3.78	3.95
		9,000	3.69	3.85	4.01
		18,000	3.88	4.01	4.15
		40,000	3.88	4.02	4.15

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on consumers of the considered WICF refrigeration systems by looking at what the effects of the proposed standards at each TSL would be on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, equipment price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses equipment lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

The LCC results are the shipment-weighted average of results for each equipment class over system capacity using the weights for each shown in Table IV–6. The results for each TSL were approximated by analyzing the equipment class and nominal capacity combinations with the closest AWEF rating shown in Table V–1 that was analyzed in the engineering analysis. See chapter 8 of the TSD for more detailed LCC results.

Table V–2 through Table V–3 show the LCC and PBP results for the TSL efficiency levels considered for each equipment class under the different consumer installation scenarios discussed in section IV.F.1. In the first of each pair of tables, the simple payback is measured relative to the baseline equipment (EL 0). In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.9 of this document). Consumers for whom the LCC increases at a given TSL are projected to experience a net cost.

TABLE V–2—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR INDOOR DEDICATED CONDENSING UNITS, LOW-TEMPERATURE

[DC.L.I, condensing unit only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$3,727	$2,227	$18,320	$22,047		10.6
1	1	3,761	2,191	18,019	21,779	0.9	10.6
2	2	4,004	2,005	16,484	20,488	1.2	10.6
3	3	4,036	1,981	16,294	20,330	1.3	10.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR INDOOR DEDICATED CONDENSING UNITS, LOW-TEMPERATURE

[DC.L.I, condensing unit only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$268	0
2	2	1,559	0
3	3	1,717	0

*The savings represent the average LCC for affected consumers.

TABLE V–4—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR OUTDOOR DEDICATED CONDENSING UNITS, LOW-TEMPERATURE

[DC.L.O, condensing unit only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$4,508	$2,712	$22,368	$26,877		10.5
1	1	4,562	2,523	20,808	25,370	0.3	10.5
2	2	4,670	2,379	19,617	24,286	0.6	10.5
3	3	5,288	2,236	18,440	23,728	2.1	10.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR OUTDOOR DEDICATED CONDENSING UNITS, LOW-TEMPERATURE

[DC.L.O, condensing unit only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$1,507	0
2	2	2,590	0
3	3	3,148	0

*The savings represent the average LCC for affected consumers.

TABLE V–6—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR INDOOR PAIRED DEDICATED CONDENSING SYSTEMS, LOW-TEMPERATURE

[DC.L.I, field-paired]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$6,011	$2,226	$18,450	$24,461		10.6
1	1	6,051	2,185	18,108	24,159	1.0	10.6
2	2	6,310	1,992	16,504	22,814	1.3	10.6
3	3	6,412	1,961	16,247	22,659	1.5	10.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR INDOOR PAIRED DEDICATED CONDENSING SYSTEMS, INDOOR CONDENSING UNITS

[DC.L.I, field-paired]

TSL	EL	Life-cycle cost savings	
		Average LCC savings * 2015$	Percent of consumers that experience net cost
1	1	$320	0
2	2	1,665	0
3	3	1,820	0

* The savings represent the average LCC for affected consumers.

TABLE V–8—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR OUTDOOR PAIRED DEDICATED CONDENSING SYSTEMS, LOW-TEMPERATURE

[DC.L.O, field-paired]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$7,304	$2,713	$22,428	$29,731		10.5
1	1	7,366	2,518	20,814	28,180	0.3	10.5
2	2	7,431	2,387	19,737	27,167	0.5	10.5
3	3	7,627	2,275	18,810	26,438	1.0	10.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR OUTDOOR PAIRED DEDICATED CONDENSING SYSTEMS, OUTDOOR CONDENSING UNITS

[(DC.L.O, field-paired]

TSL	EL	Life-cycle cost savings	
		Average LCC savings * 2015$	Percent of consumers that experience net cost
1	1	$1,552	0
2	2	2,564	0
3	3	3,294	0

* The savings represent the average LCC for affected consumers.

TABLE V–10—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR LOW-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING INDOOR CONDENSING UNITS

[DC.L.I, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,283	$2,227	$18,347	$20,629		10.5
1	1	2,317	2,213	18,232	20,549	1.6	10.5
2	2	2,378	2,201	18,128	20,507	3.5	10.5
3	3	2,433	2,190	18,041	20,473	4.6	10.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR LOW-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING INDOOR CONDENSING UNITS

[DC.L.I, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$81	0
2	2	122	1
3	3	156	2

*The savings represent the average LCC for affected consumers.

TABLE V–12—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR LOW-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING OUTDOOR CONDENSING UNITS

[DC.L.O, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,795	$2,712	$22,308	$25,103		10.4
1	1	2,809	2,705	22,255	25,064	0.6	10.4
2	2	2,856	2,685	22,087	24,943	2.3	10.4
3	3	2,969	2,651	21,810	24,779	4.3	10.4

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–13—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR LOW-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING OUTDOOR CONDENSING UNITS

[DC.L.O, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$39	0
2	2	160	0
3	3	324	2

*The savings represent the average LCC for affected consumers.

TABLE V–14—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR MEDIUM-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING INDOOR CONDENSING UNITS

[DC.M.I, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,187	$1,226	$10,010	$12,198		10.5
1	1	2,187	1,226	10,010	12,198	0.0	10.5
2	2	2,218	1,212	9,901	12,119	1.8	10.5
3	3	2,227	1,209	9,875	12,102	1.9	10.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

TABLE V–15—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEDIUM-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING INDOOR CONDENSING UNITS

[DC.M.I, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings * 2015$	Percent of consumers that experience net cost
1	1	$0	0
2	2	79	1
3	3	96	1

* The savings represent the average LCC for affected consumers.

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

TABLE V–16—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR MEDIUM-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING OUTDOOR CONDENSING UNITS

[DC.M.O, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,294	$984	$8,070	$10,364		10.6
1	1	2,294	984	8,070	10,364	0.0	10.6
2	2	2,320	970	7,956	10,277	1.3	10.6
3	3	2,329	968	7,937	10,265	1.4	10.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

TABLE V–17—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR MEDIUM-TEMPERATURE UNIT COOLERS, ATTACHED TO DEDICATED CONDENSING OUTDOOR CONDENSING UNITS

[DC.M.O, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings * 2015$	Percent of consumers that experience net cost
1	1	$0	0
2	2	87	0
3	3	99	0

* The savings represent the average LCC for affected consumers.

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

TABLE V–18—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR UNIT COOLERS, LOW-TEMPERATURE

[UC.L, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,850	$2,209	$18,831	$21,681		10.6
1	1	2,856	2,207	18,820	21,676	0.6	10.6
2	2	2,898	2,190	18,670	21,569	2.7	10.6

TABLE V–18—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR UNIT COOLERS, LOW-TEMPERATURE—Continued

[UC.L, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	3	3,115	2,166	18,468	21,583	7.3	10.6

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–19—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR UNIT COOLERS, LOW-TEMPERATURE

[UC.L, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$4	1
2	2	112	8
3	3	97	42

*The savings represent the average LCC for affected consumers.

TABLE V–20—AVERAGE LCC AND PBP RESULTS BY TRIAL STANDARD LEVEL FOR UNIT COOLERS, MEDIUM TEMPERATURE

[UC.M, unit cooler only]

TSL	EL	Average costs 2015$				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	$2,020	$698	$5,928	$7,948		10.5
1	1	2,026	697	5,918	7,944	0.6	10.5
2	2	2,056	685	5,813	7,869	2.3	10.5
3	3	2,076	682	5,789	7,864	2.9	10.5

Note: The results for each TSL are calculated assuming that all consumers use equipment at that efficiency level. The PBP is measured relative to the baseline (EL 0) equipment.

TABLE V–21—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR UNIT COOLERS, MEDIUM TEMPERATURE

[UC.M, unit cooler only]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* 2015$	Percent of consumers that experience net cost
1	1	$5	1
2	2	79	2
3	3	84	7

*The savings represent the average LCC for affected consumers.

Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on small businesses. Table V–22 compares the average LCC savings and PBP at each efficiency level for the small business consumer subgroup, along with the average LCC savings for the entire sample. In most cases, the average LCC savings and PBP for the small business subgroup at the considered efficiency levels are not substantially different from the average for all businesses. The small business subgroup is the subgroup of consumers most likely to be affected by this proposal. Small businesses are likely to experience higher electricity prices, and experience higher costs of capital than the average for all businesses. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the small business subgroup.

TABLE V–22—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESSES CONSUMER SUBGROUP AND ALL CONSUMERS

Equipment class application—design path	Consumer subgroup	LCC savings (2015$)		
		TSL 1	TSL 2	TSL 3
DC.L.I—CS Only	National Average	$268	$1,559	$1,717
	Small Businesses	249	1,445	1,591
DC.L.O—CS Only	National Average	1,507	2,590	3,148
	Small Businesses	1,401	2,408	2,890
DC.L.I—Field Paired	National Average	320	1,665	1,820
	Small Businesses	297	1,542	1,681
DC.L.O—Field Paired	National Average	1,552	2,564	3,294
	Small Businesses	1,455	2,402	3,068
DC.L.I—UC Only	National Average	81	122	156
	Small Businesses	73	108	136
DC.L.O—UC Only	National Average	39	160	324
	Small Businesses	35	146	293
UC.M—DC.M.I	National Average	0	79	96
	Small Businesses	0	74	89
UC.M—DC.M.O	National Average	0	87	99
	Small Businesses	0	80	91
UC.L	National Average	4	112	97
	Small Businesses	NA	NA	NA
UC.M	National Average	5	79	84
	Small Businesses	NA	NA	NA
Consumer Simple PBP (years)				
DC.L.I—CS Only	National Average	0.9	1.2	1.3
	Small Businesses	0.9	1.2	1.3
DC.L.I—CS Only	National Average	0.3	0.6	2.1
	Small Businesses	0.3	0.6	2.1
DC.L.O—CS Only	National Average	1.0	1.3	1.5
	Small Businesses	1.0	1.3	1.5
DC.L.I—Field Paired	National Average	0.3	0.5	1.0
	Small Businesses	0.3	0.5	1.0
DC.L.O—Field Paired	National Average	1.6	3.5	4.6
	Small Businesses	1.6	3.5	4.6
DC.L.I—UC Only	National Average	0.6	2.3	4.3
	Small Businesses	0.6	2.2	4.3
DC.L.O—UC Only	National Average	0.0	1.8	1.9
	Small Businesses	0.0	1.8	1.8
UC.M—DC.M.I	National Average	0.0	1.3	1.4
	Small Businesses	0.0	1.3	1.4
UC.M—DC.M.O	National Average	0.6	2.7	7.3
	Small Businesses	NA	NA	NA
UC.L	National Average	0.6	2.3	2.9
	Small Businesses	NA	NA	NA

"NA" indicates that these equipment classes are not commonly purchased by small businesses.

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

*CU-Only: Condensing unit-only. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which a new condensing unit is installed to replace a failed condensing unit, but the existing unit cooler is not replaced. See section IV.F.1.b for more details.

**FP: Field-paired unit cooler and condensing unit. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which both a new condensing unit and a new unit cooler are installed. See section IV.F.1.a for more details.

† UC-Only: Unit cooler only. This analysis evaluates standard levels applied to a unit cooler distributed in commerce without a designated companion condensing unit, either dedicated or multiplex, for a scenario in which a new unit cooler is installed to replace a failed unit cooler, but the existing condensing unit is not replaced. See section IV.F.1.c for more details.

Rebuttable Presumption Payback

As discussed in section IV.F.10, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for equipment that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for the considered WICF refrigeration systems. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V–23 presents the rebuttable-presumption payback periods for the considered TSLs for the WICF equipment classes evaluated in this proposal. These results show that, in almost all cases, the projected payback period will be under three years for each of the different equipment classes with respect to each TSL examined. In those cases, the rebuttable presumption therefore applies. While DOE examined the rebuttable-presumption criterion, it also considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels for each equipment class in this NOPR, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V–23—REBUTTABLE PAYBACK PERIOD (YEARS) FOR WICF REFRIGERATION SYSTEMS

Equipment class	Trial standard level		
	1	2	3
DC.L.I (CU-Only)	0.7	1.4	1.2
DC.L.O (CU-Only)	0.3	0.5	1.9
DC.L.I (Field Paired)	0.8	1.6	1.6
DC.L.O (Field Paired)	0.4	0.5	0.9
DC.L.I (UC Only)	0.0	0.1	0.1
DC.L.O (UC Only)	0.0	0.0	0.1
UC.M—DC.M.I	0.0	0.2	0.3
UC.M—DC.M.O	0.0	0.3	0.4
UC.L	0.3	1.3	3.4
UC.M	0.1	0.2	0.3

Note: DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

*CU–Only: Condensing unit-only. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which a new condensing unit is installed to replace a failed condensing unit, but the existing unit cooler is not replaced. See section IV.F.1.b for more details.

**FP: Field-paired unit cooler and condensing unit. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which both a new condensing unit and a new unit cooler are installed. See section IV.F.1.a for more details.

†UC–Only: Unit cooler only. This analysis evaluates standard levels applied to a unit cooler distributed in commerce without a designated companion condensing unit, either dedicated or multiplex, for a scenario in which a new unit cooler is installed to replace a failed unit cooler, but the existing condensing unit is not replaced. See section IV.F.1.c for more details.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of the proposed energy conservation standards on manufacturers of the seven WICF refrigeration system equipment classes being analyzed. The section below describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

Industry Cash Flow Analysis Results

Table V–24 and Table V–25 depict the financial impacts on manufacturers of the seven WICF refrigeration equipment classes being analyzed. The financial impacts on these manufacturers are represented by changes in INPV.

The impact of energy efficiency standards were analyzed under two manufacturer markup scenarios: (1) The preservation of gross margin percentage and (2) the preservation of operating profit. As discussed in section IV.J.3.d, DOE considered the preservation of gross margin percentage scenario by applying a uniform "gross margin percentage" markup across all efficiency levels. As production cost increases with efficiency, this scenario implies that the absolute dollar markup will increase. DOE assumed a manufacturer markup of 1.35 for WICF refrigeration systems. This manufacturer markup is consistent with the one DOE assumed in the engineering analysis and the no-new-standards case of the GRIM. WICF refrigeration manufacturers indicated that it is optimistic to assume that as their production costs increase in response to an efficiency standard, they would be able to maintain the same gross margin percentage markup. Therefore, DOE assumes that this scenario represents a high bound to industry profitability under an energy-conservation standard. It also represents a lower bound to expected consumer payback periods and end-user life cycle cost savings calculated in the NIA, since an upper bound to industry profitability is also the scenario in which the highest possible costs are being passed on to the end user.

The preservation of operating profit scenario reflects WICF refrigeration manufacturer concerns about their inability to maintain their margins as manufacturing production costs increase to reach more-stringent efficiency levels. In this scenario, while WICF refrigeration manufacturers make the necessary investments required to convert their facilities to produce new standards-compliant equipment, operating profit does not change in absolute dollars and decreases as a percentage of revenue.

Each of the modeled scenarios results in a unique set of cash-flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case resulting from the sum of discounted cash-flows from 2016 (the base year) through 2049 (the end of the analysis period). To provide perspective on the short-run cash-flow impact, DOE includes in the discussion of the results a comparison of free cash-flow between the no-new-standards case and the standards case at each TSL in the year before new standards take effect.

Table V–24 and Table V–25 show the MIA results for each TSL using the markup scenarios described above for the seven WICF refrigeration system equipment classes being analyzed.

TABLE V–24—MANUFACTURER IMPACT ANALYSIS FOR WICF REFRIGERATION MANUFACTURERS UNDER THE PRESERVATION OF GROSS MARGIN MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level		
			1	2	3
INPV	2015*$ MM*	99.7	99.1	97.7	95.3
Change in INPV ($)	2015*$ MM*	....	(0.6)	(2.0)	(4.4)
Change in INPV (%)	%	....	(0.6)	(2.0)	(4.4)
Product Conversion Costs	2015*$ MM*	....	2.2	4.8	11.3
Capital Conversion Costs	2015*$ MM*	....	....	2.3	4.9
Total Investment Required	2015*$ MM*	....	2.2	7.1	16.2

TABLE V–25—MANUFACTURER IMPACT ANALYSIS FOR WICF REFRIGERATION MANUFACTURERS UNDER THE PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level		
			1	2	3
INPV	2015*$ MM*	99.7	98.3	93.4	84.9
Change in INPV ($)	2015*$ MM*	....	(1.5)	(6.3)	(14.8)
Change in INPV (%)	%	....	(1.5)	(6.3)	(14.8)
Product Conversion Costs	2015*$ MM*	....	2.2	4.8	11.3
Capital Conversion Costs	2015*$ MM*	....	....	2.3	4.9
Total Investment Required	2015*$ MM*	....	2.2	7.1	16.2

At TSL 1, DOE estimates impacts on INPV range from −$1.5 million to −$0.6 million, or a change in INPV of −1.5 percent to −0.6 percent. At TSL 1, industry free cash-flow is expected to decrease by approximately 8.1 percent to $7.7 million, compared to the no-new standards case value of $8.3 million in 2019, the year leading up to the proposed standards.

DOE expects WICF refrigeration manufacturers to incur approximately $2.2 million in product conversion costs for redesign and testing. DOE estimates WICF refrigeration manufacturers will incur minimal capital conversion costs associated with TSL 1, because the most cost effective design options are generally use of more efficient purchased parts.

At TSL 1, the shipment-weighted average MPC increases by approximately 1.0 percent across all WICF refrigeration systems relative to the no-new standards case MPC in 2020, the expected year of compliance. In the preservation of gross margin markup scenario, WICF refrigeration manufacturers are able to fully pass on this slight cost increase to consumers. The increase in MSP is outweighed the approximately $2.2 million in conversion costs that WICF refrigeration manufacturers would incur, which causes a negative change in INPV at TSL 1 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, WICF refrigeration manufacturers earn the same operating profit as would be earned in the no-new standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 1.0 percent shipment-weighted average MPC increase results in a reduction in manufacturer markup after the compliance year. This reduction in manufacturer markup and the $2.2 million in conversion costs incurred by WICF refrigeration manufacturers cause a negative change in INPV at TSL 1 under the preservation of operating profit markup scenario.

At TSL 2, DOE estimates impacts on INPV range from −$6.3 million to −$2.0 million, or a change in INPV of −6.3 percent to −2.0 percent. At TSL 2, industry free cash-flow is expected to decrease by approximately 30.2 percent to $5.8 million, compared to the no-new standards case value of $8.3 million in 2019, the year leading up to the proposed standards.

DOE expects WICF refrigeration systems to incur approximately $4.8 million in product conversion costs for redesign and testing. DOE estimates WICF refrigeration manufacturers will incur $2.3 million in capital conversion costs associated with TSL 2 to invest in tooling necessary to update condensing system production equipment for models that do not meet the required efficiency levels.

At TSL 2, the shipment-weighted average MPC increases by approximately 5.4 percent for all WICF refrigeration systems relative to the no-new standards case MPC in 2020, the expected year of compliance. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this cost increase to consumers. The increase in MSP is outweighed by approximately $7.1 million in conversion costs that WICF refrigeration manufacturers would incur, which causes a 2.0 percent drop in INPV at TSL 2.

Under the preservation of operating profit markup scenario, WICF refrigeration earn the same per-unit operating profit as would be earned in the no-new standards case. This scenario results in a reduction in manufacturer markup after the compliance year. This reduction in manufacturer markup and the $7.1 million in conversion costs incurred by WICF refrigeration manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit markup scenario.

At the max-tech level (TSL 3), DOE estimates impacts on INPV range from −$14.8 million to −$4.4 million, or a change in INPV of −14.8 percent to −4.4 percent. At TSL 3, industry free cash-flow is expected to decrease by approximately 68.1 percent to $2.7 million, compared to the no-new standards case value of $8.3 million in 2019, the year immediately prior to the proposed year of compliance for the new standards.

DOE expects manufacturers of WICF refrigeration systems to incur approximately $11.3 million in product conversion costs for redesign and testing. DOE estimates manufacturers will incur $4.9 million in capital conversion costs associated with TSL 3 to invest in tooling and machinery necessary to update condensing system production equipment for models that do not meet the required efficiency levels.

At TSL 3, the shipment-weighted average MPC increases by approximately 12.8 percent for all WICF refrigeration systems relative to the no-new standards case MPC in 2020, the expected year of compliance. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this cost increase to consumers. The increase in MSP is outweighed by approximately $16.2 million in conversion costs that WICF refrigeration manufacturers would incur, which causes a negative change in INPV at TSL 3 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, WICF refrigeration manufacturers earn the same operating profit as would be earned in the no-new standards case, but they do not earn additional profit from their investments. In this scenario, the 12.6 percent shipment-weighted average MPC increase results in a reduction in manufacturer markup after the compliance year. This reduction in manufacturer markup and the $16.2 million in conversion costs incurred cause a negative change in INPV at TSL 3 under the preservation of operating profit markup scenario.

Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on WICF refrigeration manufacturer employment, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the no-new-standards case and at each TSL. DOE used statistical data from the U.S. Census Bureau's 2014 Annual Survey of Manufacturers ("ASM") and the results of the engineering analysis to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures related to equipment manufacturing depend on the labor intensity of the equipment, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours multiplied by the labor rate found in the U.S. Census Bureau's 2014 ASM). The estimates of production workers in this section cover workers, including line supervisors, who are directly involved in fabricating and assembling equipment within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's production worker estimates only account for workers who manufacture the seven equipment classes covered by this rulemaking. For example, a production line worker producing a dedicated condensing medium temperature WICF refrigeration unit would not be included in the estimate of the production workers since dedicated condensing medium temperature units are not covered in this proposal.

DOE calculated the direct employment associated with the seven analyzed equipment classes by multiplying the number of production workers by the ratio of total employment to production workers reported in the 2014 ASM.

Using the GRIM, DOE estimates in the absence of new energy conservation standards, there would be 191 employees associated with the seven analyzed walk-in refrigeration system equipment classes in 2020. 139 of these are production workers and 52 are non-production workers. The employment impacts shown in Table V–26 represent the potential direct employment changes that could result following the compliance date for the seven WICF refrigeration equipment classes in this proposal. The upper end of the results in the table estimates the maximum increase in the number of direct employment after the implementation of new energy conservation standards and it assumes that WICF refrigeration manufacturers would continue to produce the same scope of covered equipment within the United States. The lower end of the range represents the maximum decrease in the total number of U.S. production workers if production moved to lower labor-cost countries. Additional detail on the analysis of direct employment can be found in chapter 12 of the TSD.

TABLE V–26—DIRECT EMPLOYMENT FOR THE SEVEN REFRIGERATION EQUIPMENT CLASSES IN 2020

	No-standards case	Trial standard level		
		1	2	3
Production Workers in 2020 (without changes in production locations)	139	140	146	155
Direct Employment in 2020	191	192	200	213
Potential Changes in Direct Employment in 2020	....	(139)—1	(139)—9	(139)—22

The employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in the Employment Impact Analysis found in chapter 13 of the TSD.

DOE requests comment and data on the potential impacts to direct employment levels. This is identified as Issue 13 in section VII.E, "Issues on Which DOE Seeks Comment."

Impacts on Manufacturing Capacity

DOE did not identify any significant capacity constraints for the design options being evaluated for this rulemaking. For most WICF refrigeration manufacturers, the walk-in market makes up a relatively small percentage of their overall revenues. Additionally, most of the design options being evaluated are available as equipment options today. As a result, the industry should not experience capacity constraints directly resulting from an energy conservation standard.

Impacts on Subgroups of Manufacturers

As discussed in section IV.I, using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics. Consequently, DOE analyzes small manufacturers as a sub-group.

DOE evaluated the impact of new energy conservation standards on small manufacturers, particularly those defined as "small businesses" by the SBA. The SBA defines a "small business" as having 1,250 employees or less for NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." Using this definition, DOE identified two refrigeration system manufacturers. DOE describes the differential impacts on these small businesses in this document in section VI.B.

Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product. DOE believes that a standard level is not economically justified if it contributes to an unacceptable cumulative regulatory burden. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

DOE identified one regulation, in addition to amended energy conservation standards for WICF refrigeration systems, that manufacturers will face for equipment they manufacture approximately three years before or after to the estimated compliance date of these proposed standards. DOE summarizes these regulations in Table V–27, and includes the full details of the cumulative regulatory burden, in chapter 12 of the final rule TSD.

TABLE V–27—OTHER DOE REGULATIONS POTENTIALLY AFFECTING WICF REFRIGERATION SYSTEM MANUFACTURERS

Regulation	Number of manufacturers*	Number of manufacturers from today's rule**	Approximate standards year	Industry conversion costs (2012$ million)	Conversion costs as a percentage of revenue***
Commercial Refrigeration Equipment, 79 FR 17726 (March 28, 2014)	54	4	2017	$184.0	2
Non-vacated Walk-in Cooler and Walk-in Freezer Components, 79 FR 32050 (June 3, 2014)	63	9	2017	33.6	3

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing the covered walk-in refrigeration equipment that are also identified as manufacturers in the energy conservation standard contributing to cumulative regulatory burden.

*** This column presents conversion costs as a percentage of conversion period revenue for the industry. The conversion period is the timeframe over which manufacturers must make conversion costs investments and lasts from the announcement year of the final rule to the standards year of the final rule. This period typically ranges from 3 to 5 years, depending on the energy conservation standard.

This NOPR proposes energy conservation standards for seven WICF refrigeration system equipment classes. The thirteen other standards established in the June 2014 final rule and shown in Table I–1 (that is, the four standards applicable to dedicated condensing refrigeration systems operating at medium temperatures; three standards applicable to panels; and six standards applicable to doors) have not been vacated and remain subject to the June 5, 2017 compliance date prescribed by the June 2014 final rule.[57]

DOE anticipates that nine manufacturers who would be subject to this proposal would also be subject to certain of the non-vacated standards, namely the refrigeration system standards applicable to dedicated condensing refrigeration systems operating at medium temperatures. Three of these manufacturers also produce panels and non-display doors, and would be subject to those non-vacated standards as well.

Impact on Manufacturers of Complete Walk-Ins

A manufacturer of a complete walk-in is the entity that assembles the complete walk-in cooler or walk-in freezer. In some cases, this may be an "installer." Walk-in manufacturers have been subject to regulation since 2009, when EPCA's statutorily-prescriptive standards for walk-in coolers and freezers went into effect. 42 U.S.C. 6313(f)(1) EPCA required that all completed walk-ins must: Have automatic door closers; have strip doors, spring hinged doors, or other method of minimizing infiltration when doors are open; and for all interior lights, use light sources with an efficacy of 40 lumens per watt or more. Furthermore, for walk-ins that use an evaporator fan motor with a rating of under 1 horsepower ("hp") and less than 460 volts, that fan motor must be either a three-phase motor or an electronically commutated motor. Also, walk-in freezers with transparent reach-in doors must have triple-pane glass with either heat-reflective treated glass or gas fill for doors and windows. 42 U.S.C. 6313(f)(1).

Due to existing regulations, manufacturers of complete walk-ins have a responsibility to use components that comply with the applicable standards and to ensure the final product fulfills the prescriptive design requirements. To aid manufacturers of complete walk-ins in meeting these responsibilities, DOE has proposed labeling requirements as part of a separate NOPR addressing potential amendments to the test procedure for walk-in coolers and walk-in freezers. 81 FR 54926 (August 17, 2016). As part of that proposal, DOE is considering requiring the use of permanent nameplates on WICF components that include rating information and indications of suitability for WICF applications. In DOE's view, the inclusion of such a requirement would help reduce the burden on manufacturers of complete walk-ins, relative to the existing compliance regime, by allowing them to more easily identify and select compliant WICF components for assembly.

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[57] But see *http://www.energy.gov/sites/prod/files/2016/02/f29/Enforcement%20Policy%20Statement%20-%20WICF%2002-01-16.pdf* (outlining DOE's enforcement discretion policy to not seek civil penalties or injunctive relief regarding the WICF refrigeration systems at issue in this rulemaking proceeding).

DOE notes that this document does not propose to include energy conservation standards that are measured in terms of the performance of the complete walk-in and does not introduce new burdens on manufacturers of the complete walk-in, including installers (*i.e.,* the parties that assemble the complete walk-in). As a practical matter, walk-in manufacturers already comply with the applicable panel and door requirements, which have been in effect since 2009. Additionally, installers, and all other manufacturers of complete walk-ins, have no paperwork or certification requirements as a result of this proposal when using certified walk-in components. DOE was unable to identify whether installer conversion costs would be likely to occur as a direct result of the proposed standards since conversion costs are borne by component manufacturers. It is possible installers would have stranded assets in the form of refrigeration component inventory that is not compliant with the proposed standard. However, the WICF market involves a high degree of customization—walk-ins can vary dramatically in size, shape, capacity, and end-user application. This suggests that installers do not generally carry significant refrigeration system inventory. Furthermore, installers will have a conversion period, between the publication date and the compliance date of the final rule, to wind-down component surpluses and these components may be used to repair existing units deployed in the field.

Companies that are both manufacturers of walk-in components and manufacturers of complete walk-ins must comply with standards for WICF components established in the 2014 final rule for panels, doors, and medium-temperature dedicated condensing refrigeration systems.[58] They would also have to comply with the standards proposed in this document for low-temperature dedicated condensing refrigeration systems and for unit coolers. Additionally, they have existing responsibility to comply with prescriptive design standards for the complete walk-ins.

DOE requests data on conversion costs (upfront investments necessary ahead of the standard taking effect) and stranded assets, if any, that manufacturers who assemble complete walk-ins (including those installed on-site) could incur as a result of the proposed standards. DOE also requests comment on any direct burdens on installers that would arise as a result of the proposed rule. This is identified as Issue 14 in section VII.E, "Issues on Which DOE Seeks Comment."

C. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for the considered WICF refrigeration systems, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the first full year of anticipated compliance with the proposed standards (2020–2049). Table V–28 present DOE's projections of the national energy savings for each TSL considered for the considered WICF refrigeration systems. The savings were calculated using the approach described in section IV.H of this proposed rule.

TABLE V–28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR WICF REFRIGERATION SYSTEMS SHIPPED IN 2020–2049

	Quads		
	Trial standard level		
	1	2	3
Primary energy	0.23	0.62	0.86
FFC energy	0.24	0.65	0.90

OMB Circular A–4[59] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of equipment shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of, and compliance with, such revised standards.[60] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to WICF refrigeration systems. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a nine-year analytical period are presented in Table V–29. The impacts are counted over the lifetime of the considered WICF refrigeration systems purchased in 2020–2028.

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[58] See also *http://www.energy.gov/gc/downloads/walk-coolerwalk-freezer-refrigeration-systems-enforcement-policy* (detailing aspects of DOE's enforcement policy as to walk-in refrigeration systems).

[59] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[60] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain equipment, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer equipment, the compliance period is 5 years rather than 3 years.

TABLE V–29—CUMULATIVE NATIONAL ENERGY SAVINGS FOR WICF REFRIGERATION SYSTEMS; NINE YEARS OF SHIPMENTS

[2020–2028]

	Quads		
	Trial standard level		
	1	2	3
Primary energy	0.14	0.18	0.23
FFC energy	0.15	0.18	0.24

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for the considered WICF refrigeration systems. In accordance with OMB's guidelines on regulatory analysis,[61] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V–30 shows the consumer NPV results with impacts counted over the lifetime of equipment purchased in 2020–2049.

TABLE V–30—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR WICF REFRIGERATION SYSTEMS SHIPPED IN 2020–2049

Discount rate	Billion 2015$		
	Trial standard level		
	1	2	3
3 percent	1.3	3.3	4.3
7 percent	0.5	1.4	1.8

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–31. The impacts are counted over the lifetime of equipment purchased in 2020–2028. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V–31—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR WICF REFRIGERATION SYSTEMS; NINE YEARS OF SHIPMENTS

[2020–2028]

Discount rate	Billion 2015$		
	Trial standard level		
	1	2	3
3 percent	0.7	0.9	0.8
7 percent	0.3	0.5	0.6

The results reflect the use of a constant trend to estimate the change in price for the considered WICF refrigeration systems over the analysis period (see section IV.F). DOE also conducted a sensitivity analysis that considered one scenario with an increasing price trend and one scenario with a decreasing price trend. The results of these alternative cases are presented in appendix 10B of the NOPR TSD.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for WICF refrigeration systems to reduce energy bills for consumers of those equipment, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2020–2025), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

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[61] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

1. Impact on Utility or Performance of Products

Based on testing conducted in support of this proposed rule, discussed in section IV.C.1. of thisdocument, DOE has tentatively concluded that the proposed standards would not reduce the utility or performance of the WICF refrigeration systems under consideration in this rulemaking. Manufacturers of these equipment currently offer units with an efficiency level that that meets or exceeds the proposed standards.

DOE seeks comment on whether there are features or attributes of the more energy-efficient WICF refrigeration systems that manufacturers would produce to meet the standards in this proposed rule that might affect how they would be used by consumers. DOE requests comment specifically on how any such effects should be weighed in the choice of standards for the final rule. This is identified as Issue 15 in section VII.E, "Issues on Which DOE Seeks Comment."

2. Impact of Any Lessening of Competition

As discussed in section III.E.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule to adopt standards for the equipment at issue. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

3. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from the proposed standards for the considered WICF refrigeration systems is expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V–32 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V–32—CUMULATIVE EMISSIONS REDUCTION FOR WICF REFRIGERATION SYSTEMS SHIPPED IN 2020–2049

	Trial standard level		
	1	2	3
Power Sector Emissions			
CO_2 (million metric tons)	13.5	37.2	51.5
SO_2 (thousand tons)	8.1	22.5	31.2
NO_X (thousand tons)	14.8	40.9	56.5
Hg (*tons*)	0.03	0.08	0.12
CH_4 (thousand tons)	1.2	3.2	4.5
N_2O (thousand tons)	0.2	0.5	0.6
Upstream Emissions			
CO_2 (million metric tons)	0.8	2.1	2.9
SO_2 (thousand tons)	0.1	0.4	0.5
NO_X (thousand tons)	10.8	29.8	41.2
Hg (*tons*)	0.0003	0.001	0.001
CH_4 (thousand tons)	59.5	164.6	227.7
N_2O (thousand tons)	0.01	0.02	0.03
Total FFC Emissions			
CO_2 (million metric tons)	14.2	39.3	54.4
SO_2 (thousand tons)	8.3	22.9	31.7
NO_X (thousand tons)	25.6	70.7	97.7
Hg (*tons*)	0.03	0.08	0.12
CH_4 (thousand tons)	60.7	167.9	232.1
CH_4 (thousand tons CO_2eq) *	1,699.5	4,700.0	6,500.1
N_2O (thousand tons)	0.2	0.5	0.7
N_2O (thousand tons CO_2eq) *	45.6	126.2	174.5

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for the considered WICF refrigeration systems. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2015$) are represented by $12.4/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.6/metric ton (the average value from a distribution that uses a 3-percent discount rate), $63.2/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $118/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V–33 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 16 of the NOPR TSD.

TABLE V–33—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2020–2049

TSL	SCC case*			
	Million 2015$			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	95.9	437.2	693.5	1,332.8
2	265.3	1,209.1	1,917.8	3,685.9
3	367.0	1,672.2	2,652.3	5,097.6
Upstream Emissions				
1	5.3	24.2	38.4	73.8
2	14.6	66.9	106.2	204.0
3	20.1	92.5	146.9	282.2
Total FFC Emissions				
1	101.2	461.4	731.9	1,406.6
2	279.9	1,276.0	2,024.0	3,889.9
3	387.1	1,764.7	2,799.2	5,379.8

*For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.4, $40.6, $63.2, and $118 per metric ton (2015$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. DOE is part of the Interagency Working Group ("IWG") on the Social Cost of Carbon and as such, will work with other Federal agencies to continue to review its estimates for the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. It will also consider on-going input from the National Academies of Sciences, Engineering and Medicine, who recently provided interim recommendations to the IWG for enhancing its presentation of uncertainty regarding these estimates and who will be providing a more comprehensive report in early 2017. Consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses using the recommendations from the IWG.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for WICF refrigeration systems. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V–34 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V–36.

While the SCC-related values (including social cost of N2O and methane) did not play a direct role in influencing the level of efficiency proposed in this document, DOE notes that environmental benefits that flow from these values are used to support DOE's decisions on efficiency. DOE also notes that their relationship to the projected energy savings that would accrue from the proposed standards is a positive one. In other words, as the level of efficiency—as determined under DOE's analysis independent of the separate examination of the SCC impacts—increases, so too does the level of potential benefits with respect to GHG emissions. Accordingly, the greenhouse gas related data project potential benefits that are separate but additive to those that were independently derived from DOE's examination of the consumer benefits of the potential standard level considered in this document.

TABLE V–34—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR WICF REFRIGERATION SYSTEMS SHIPPED IN 2020–2049

TSL	Million 2015$	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	27.9	11.5
2	77.2	31.9
3	106.7	44.1
Upstream Emissions		
1	20.2	8.1
2	55.9	22.5
3	77.3	31.1
Total FFC Emissions		
1	48.1	19.7
2	133.1	54.4
3	184.0	75.2

4. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

5. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V–35 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the 2015 values in the four sets of SCC values discussed.

TABLE V–35—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Billion 2015$			
	Consumer NPV at 3% discount rate added with:			
	SCC Case $12.4/metric ton and 3% low NO_X values	SCC Case $40.6/metric ton and 3% low NO_X values	SCC Case $63.2/metric ton and 3% low NO_X values	SCC Case $118/metric ton and 3% low NO_X values
1	1.4	1.8	2.0	2.7
2	3.7	4.7	5.5	7.4
3	4.8	6.2	7.2	9.8
TSL	Billion 2015$			
	Consumer NPV at 7% discount rate added with:			
	SCC Case $12.4/metric ton and 7% low NO_X values	SCC Case $40.6/metric ton and 7% low NO_X values	SCC Case $63.2/metric ton and 7% low NO_X values	SCC Case $118/metric ton and 7% low NO_X values
1	0.7	1.0	1.3	2.0
2	1.7	2.7	3.5	5.4
3	2.2	3.6	4.6	7.2

Note: The SCC case values represent the global SCC in 2015, in 2015$, for each case.

In considering the results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2020 to 2049. Because CO_2 emissions have a very long residence time in the atmosphere,[62] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

D. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. See 42 U.S.C. 6295(o)(2)(A) and 6316(a). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B) and 6316(a))

For this NOPR, DOE considered the impacts of adopting the proposed standards for the specified WICF refrigeration systems at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, the tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

1. Benefits and Burdens of TSLs Considered for WICF Refrigeration System Standards

Table V–36 and Table V–37 summarize the quantitative impacts estimated for each TSL for the considered WICF refrigeration systems. The national impacts are measured over the lifetime of these WICF refrigeration systems purchased in the 30-year period that begins in the anticipated year of compliance with the proposed standards (2020–2049). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this proposed rule.

TABLE V–36—SUMMARY OF ANALYTICAL RESULTS FOR WICF REFRIGERATION SYSTEMS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
Cumulative FFC National Energy Savings *(quads)*			
	0.24	0.65	0.90.
NPV of Consumer Costs and Benefits *(2015$ billion)*			
3% discount rate	1.3	3.3	4.3.
7% discount rate	0.5	1.4	1.8.
Cumulative FFC Emissions Reduction (Total FFC Emissions)			
CO_2 (million metric tons)	14.2	39.3	54.4.
SO_2 (thousand tons)	8.3	22.9	31.7.
NO_X (thousand tons)	25.6	70.7	97.7.
Hg *(tons)*	0.03	0.08	0.12.
CH_4 (thousand tons)	60.7	167.9	232.1.
CH_4 (thousand tons CO_2eq) *	1699.5	4700.0	6500.1.
N_2O (thousand tons)	0.17	0.48	0.66.
N_2O (thousand tons CO_2eq) *	45.6	126.2	174.5.
Value of Emissions Reduction (Total FFC Emissions)			
CO_2 (2015$ billion) **	0.10 to 1.41	0.28 to 3.89	0.39 to 5.38.
NO_X—3% discount rate *(2015$ million)*	48.1 to 109.7	133.1 to 303.4	184.0 to 419.6.
NO_X—7% discount rate *(2015$ million)*	19.7 to 44.3	54.4 to 122.6	75.2 to 169.6.

Note: Parentheses indicate negative (−) values.
* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V–37—SUMMARY OF ANALYTICAL RESULTS FOR WICF REFRIGERATION SYSTEMS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1 *	TSL 2 *	TSL 3 *
Manufacturer Impacts			
Industry NPV (2015$ million) (No-new-standards case INPV = 99.7)	98.3 to 99.1	93.4 to 97.7	84.9 to 95.3.
Industry NPV (*% change*)	(1.5) to (0.6)	(6.3) to (2.0)	(14.8) to (4.4).

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[62] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'" 110 *J. Geophys. Res.* D14105 (2005).

TABLE V–37—SUMMARY OF ANALYTICAL RESULTS FOR WICF REFRIGERATION SYSTEMS TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1*	TSL 2*	TSL 3*
Consumer Average LCC Savings (2015$)			
DC.L.I (CU-Only)*	268	1,559	1,717.
DC.L.O (CU-Only)	1,507	2,590	3,148.
DC.L.I (Field Paired)**	320	1,665	1,820.
DC.L.O (Field Paired)	1,552	2,564	3,294.
DC.L.I (UC-Only)†	81	122	156.
DC.L.O (UC-Only)	39	160	324.
UC.M—DC.M.I	0	79	96.
UC.M—DC.M.O	0	87	99.
UC.L	4	112	97.
UC.M	5	79	84.
Consumer Simple PBP (years)			
DC.L.I (CU-Only)*	0.9	1.2	1.3.
DC.L.O (CU-Only)	0.3	0.6	2.1.
DC.L.I (Field Paired)**	1.0	1.3	1.5.
DC.L.O (Field Paired)	0.3	0.5	1.0.
DC.L.I (UC-Only)†	1.6	3.5	4.6.
DC.L.O (UC-Only)	0.6	2.3	4.3.
UC.M—DC.M.I	0.0	1.8	1.9.
UC.M—DC.M.O	0.0	1.3	1.4.
UC.L	0.6	2.7	7.3.
UC.M	0.6	2.3	2.9.
% of Consumers that Experience Net Cost			
DC.L.I (CU-Only)*	0	0	0.
DC.L.O (CU-Only)	0	0	0.
DC.L.I (Field Paired)**	0	0	0.
DC.L.O (Field Paired)	0	0	0.
DC.L.I (UC-Only)†	0	1	2.
DC.L.O (UC-Only)	0	0	2.
UC.M—DC.M.I	0	1	1.
UC.M—DC.M.O	0	0	0.
UC.L	1	8	42.
UC.M	1	2	7.

Note: Parentheses indicate negative (−) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.

*CU-Only: Condensing unit-only. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which a new condensing unit is installed to replace a failed condensing unit, but the existing unit cooler is not replaced. See section IV.F.1.b for more details.

**FP: Field-paired unit cooler and condensing unit. This analysis evaluates standard levels applied to a condensing unit distributed in commerce without a designated companion unit cooler for a scenario in which both a new condensing unit and a new unit cooler are installed. See section IV.F.1.a for more details.

†UC-Only: Unit cooler only. This analysis evaluates standard levels applied to a unit cooler distributed in commerce without a designated companion condensing unit, either dedicated or multiplex, for a scenario in which a new unit cooler is installed to replace a failed unit cooler, but the existing condensing unit is not replaced. See section IV.F.1.c for more details.

‡For this NOPR, DOE is examining the impacts of unit coolers (UC.M and UC.L) combined with medium temperature dedicated condensing equipment (DC.M.I and DC.M.O), but DOE is not considering establishing standards for the latter equipment, as they are covered by the 2014 final rule standards that were not vacated by the Fifth Circuit order.

In analyzing the different standards, DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save an estimated 0.86 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.8 billion using a discount rate of 7 percent, and $4.3 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 54.4 Mt of CO_2, 31.7 thousand tons of SO_2, 97.7 thousand tons of NO_X, 0.012 tons of Hg, 232.1 thousand tons of CH_4, and 0.7 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $0.39 billion to $5.38 billion.

At TSL 3, the average LCC impact for low-temperature dedicated condensing units is a savings of $1,171 for DC.L.I, $3,148 for DC.L.O for the condensing unit-only; $1,820 for DC.L.I, $3,294 for DC.L.O for field-paired equipment. The average LCC impact for low-temperature unit coolers (UC.L) is a savings of $156 and $324 when connected to indoor and outdoor low-temperature dedicated condensing units, respectively, and $97 when connected to low-temperature multiplex condensing equipment. The average LCC impact for medium-temperature unit coolers (UC.M) is a savings of $96 and $99 when connected to indoor and outdoor medium-temperature dedicated condensing units, respectively, and $84 when connected to medium-temperature multiplex condensing equipment. The simple payback period impact for low-temperature dedicated condensing units is 1.2 years for DC.L.I and, 2.1 years for DC.L.O for the condensing unit-only; 1.5 years for DC.L.I and, 1.0 years for

DC.L.O for field-paired equipment. The simple payback period for low-temperature unit coolers (UC.L) is 4.6 years and 4.3 years when connected to indoor and outdoor low-temperature dedicated condensing units, respectively, and 7.3 years when connected to low-temperature multiplex condensing equipment. The simple payback period for medium-temperature unit coolers (UC.M) is 1.8 years and 1.3 years when connected to indoor and outdoor medium-temperature dedicated condensing units, respectively, and 2.9 years when connected to medium-temperature multiplex condensing equipment. The fraction of consumers experiencing a net LCC cost is zero percent for low-temperature dedicated condensing units DC.L.I and DC.L.O for the condensing unit-only; and zero percent for DC.L.I and DC.L.O for field-paired equipment. The fraction of consumers experiencing a net LCC cost for low-temperature unit coolers (UC.L) is 2 percent when connected to indoor and outdoor low-temperature dedicated condensing units, respectively, and 42 percent when connected to low-temperature multiplex condensing equipment. The fraction of consumers experiencing a net LCC cost for medium-temperature unit coolers (UC.M) is 1 percent and zero percent when connected to indoor and outdoor medium-temperature dedicated condensing units, respectively, and 7 percent when connected to medium-temperature multiplex condensing equipment.

At TSL 3, the projected change in INPV ranges from − $14.8 million to − $4.4 million, which corresponds to a change of − 14.8 percent and − 4.4 percent, respectively. DOE estimates that compliance with TSL 3 will require a total industry investment of $16.2 million.

In addition, the proposed TSL 3 standards are consistent with the unanimous recommendations submitted by the Working Group and approved by the ASRAC. (See: Term Sheet at EERE–2015–BT–STD–0016–0056, recommendation #5) DOE has encouraged the negotiation of proposed standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at TSL 3 for the considered WICF refrigeration systems, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers. Accordingly, the Secretary has tentatively concluded that TSL 3 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE's conclusion is further supported by, but does not depend on, the benefits from the reduction of greenhouse gases projected to occur with this level.

Therefore, based on the considerations, DOE proposes to adopt the energy conservation standards for WICF refrigeration systems at TSL 3. The proposed energy conservation standards for the considered WICF refrigeration systems, which are expressed as AWEF, are shown in Table V–38.

TABLE V–38—PROPOSED ENERGY CONSERVATION STANDARDS FOR WICF REFRIGERATION SYSTEMS

Equipment class	Capacity (C_{net})* (Btu/h)	Minimum AWEF (Btu/W-h)
Unit Coolers—Low-Temperature	<15,500	$1.575 * 10^{-5} * q_{net} + 3.91$
	≥15,500	4.15
Unit Coolers—Medium Temperature	All	9.00
Dedicated Condensing System—Low-Temperature, Outdoor	<6,500	$6.522 * 10^{-5} * q_{net} + 2.73$
	≥6,500	3.15
Dedicated Condensing System—Low-Temperature, Indoor	<6,500	$9.091 * 10^{-5} * q_{net} + 1.81$
	≥6,500	2.40

* Where q_{net} is net capacity as determined and certified pursuant 10 CFR 431.304.

2. Summary of Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2015$) of the benefits from operating equipment that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[63]

Table V–39 shows the annualized values for the considered WICF refrigeration systems under TSL 3, expressed in 2015$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.6/t in 2015),[64] the estimated cost of the standards proposed in this rule is $43.9 million per year in increased equipment costs, while the estimated annual benefits are $217.9 million in reduced equipment operating costs, $98.4 million in CO_2 reductions, and

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[63] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[64] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

$7.4 million in reduced NO$_X$ emissions. In this case, the net benefit amounts to $280 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.6/t in 2015, the estimated cost of the proposed standards is $45.9 million per year in increased equipment costs, while the estimated annual benefits are $283.3 million in reduced operating costs, $98.4 million in CO$_2$ reductions, and $10.3 million in reduced NO$_X$ emissions. In this case, the net benefit amounts to $346 million per year.

TABLE V–39—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 3) FOR WICF REFRIGERATION SYSTEMS

	Discount rate	Million 2015$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	217.9	200.4	237.4.
	3%	283.3	257.9	314.7.
CO$_2$ Reduction Value ($12.4/t case) **	5%	29.2	27.8	30.7.
CO$_2$ Reduction Value ($40.6/t case) **	3%	98.4	93.5	103.7.
CO$_2$ Reduction Value ($63.2/t case) **	2.5%	144.0	136.8	151.9.
CO$_2$ Reduction Value ($118/t case) **	3%	299.9	285.0	316.3.
NO$_X$ Reduction Value	7%	7.4	7.1	17.4.
	3%	10.3	9.8	24.6.
Total Benefits †	7% plus CO$_2$ range	255 to 525	235 to 493	285 to 571.
	7%	324	301	359.
	3% plus CO$_2$ range	323 to 593	295 to 553	370 to 656.
	3%	392	361	443.
Costs				
Consumer Incremental Product Costs	7%	43.9	43.4	44.4.
	3%	45.9	45.3	46.5.
Net Benefits				
Total †	7% plus CO$_2$ range	211 to 481	192 to 449	241 to 527.
	7%	280	258	314.
	3% plus CO$_2$ range	277 to 548	250 to 507	323 to 609.
	3%	346	316	397.

* This table presents the annualized costs and benefits associated with WICF refrigeration systems shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the equipment purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

** The CO$_2$ values represent global monetized values of the SCC, in 2015$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† DOE estimated the monetized value of NO$_X$ emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For the Primary Estimate and Low Net Benefits Estimate, DOE used a national benefit-per-ton estimate for NO$_X$ emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.6/t case). In the rows labeled "7% plus CO$_2$ range" and "3% plus CO$_2$ range," the operating cost and NO$_X$ benefits are calculated using the labeled discount rate, and those values are added to the full range of CO$_2$ values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE

attempts to quantify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an "economically" significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis ("IRFA") for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

A manufacturer of a walk-in cooler or walk-in freezer is any person who: (1) Manufactures a component of a walk-in cooler or walk-in freezer that affects energy consumption, including, but not limited to, refrigeration systems, doors, lights, windows, or walls; or (2) manufactures or assembles the complete walk-in cooler or walk-in freezer. 10 CFR 431.302. DOE considers manufacturers of refrigeration system components (referred to as WICF refrigeration manufacturers) and assemblers of the complete walk-in (or installers) separately for this Regulatory Flexibility Review.

This document proposes to set energy conservation standards for seven equipment classes of WICF refrigeration systems. Manufacturers of WICF refrigeration system components are responsible for ensuring the compliance of the components to the proposed standard. WICF refrigeration manufacturers are required to certify to DOE the compliance of the components they manufacture or import. DOE used the SBA's small business size standards to determine whether any small WICF refrigeration manufacturers would be subject to the requirements of the rule. *See* 13 CFR part 121. WICF refrigeration manufacturing is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

This document does not propose new or amended energy conservation standards that are measured in terms of the performance of the complete walk-in cooler or freezer. Manufacturers of complete walk-ins (which may be on-site installers) assemble certified components that have been previously tested and rated, such as panels, doors, and refrigeration systems, to complete the walk-in on-site. However, they are not required to certify compliance of their installations to DOE for energy conservation standards. Installers of complete walk-ins are categorized under NAICS 238220, which covers "Commercial Refrigeration System Installation." SBA has set a revenue threshold of $15 million or less for an entity to be considered small for this category. However, given the lack of publicly available revenue information for walk-in assemblers and installers, DOE chose to use a threshold of 1,250 employees or less to be small in order to be consistent with the threshold for WICF component manufacturers.

Based on these thresholds, DOE present the following IRFA analysis:

1. Why This Action Is Being Considered

Title III, Part B of the Energy Policy and Conservation Act of 1975 ("EPCA" or, in context, "the Act"), Public Law 94–163 (codified as 42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the refrigeration systems used in walk-ins that are the subject of this rulemaking—low-temperature dedicated condensing systems and low and medium temperature unit coolers. (42 U.S.C. 6311(1)(G)) EPCA, as amended, prescribed energy conservation standards for these equipment (42 U.S.C. 6313(f)). In addition, EPCA required DOE to establish performance-based standards for walk-in coolers and freezers that achieve the maximum improvement in energy that the Secretary finds is technologically feasible and economically justified. 42 U.S.C. 6313(f)(4)

2. Objectives of, and Legal Basis for, the Proposed Rule

As noted elsewhere in this document, DOE published a final rule prescribing performance-based energy conservation standards for walk-ins manufactured on or after June 5, 2017. 79 FR 32050 (June 3, 2014). Those standards applied to the main components of a walk-in: Refrigeration systems, panels, and doors. Also as discussed earlier in this document, a legal challenge was filed to that rule, which resulted in a settlement agreement and court order in which the Fifth Circuit Court of Appeals vacated six refrigeration system standards established in that rule—(1) the two energy conservation standards applicable to multiplex condensing refrigeration systems (re-named unit coolers for purposes of this rule) operating at medium and low temperatures; and (2) the four energy conservation standards applicable to dedicated condensing refrigeration systems operating at low temperatures. This proposal, which was the result of a months-long negotiated rulemaking arising from the settlement agreement, is consistent with the Term Sheet developed as part of that negotiated rulemaking and would, if finalized, adopt the agreed-upon standards contained in that Term Sheet for the six classes of refrigeration systems. The proposal also examines the potential impacts on walk-in installers.

3. Description and Estimated Number of Small Entities Regulated

During its market survey, DOE used available public information to identify small WICF refrigeration component manufacturers. DOE's research involved industry trade association membership directories (including those maintained by AHRI[65] and NAFEM),[66] public databases (*e.g.* the SBA Database),[67] individual company Web sites, market research tools (*e.g.,* Dunn and Bradstreet reports[68] and Hoovers reports)[69] to create a list of companies that manufacture or sell equipment covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small WICF refrigeration component manufacturers during manufacturer interviews conducted for the June 2014 final rule and at DOE public meetings. DOE reviewed publicly-available data and contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of WICF refrigeration systems. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the definition of a "small business," or are foreign-owned.

DOE identified nine WICF refrigeration manufacturers that produce equipment for one or more of the equipment classes analyzed in this proposal. All nine refigeration manufacturers are domestic companies. Two of the nine WICF refrigeration manufacturers are small businesses based on the 1,250 person threshold for NAICS 333415.

DOE was unable to identify any company that operated exclusively as a manufacturer of complete walk-ins. All businesses that were manufacturers of complete walk-ins offered their services as part of a broader range of products and service capabilities. All small business manufacturers of complete walk-ins that DOE identified were on-site installers that also offered HVAC installation or commercial refrigeration equipment installation services. DOE relied on U.S. Census data for NAICS code 238300. The NAICS code aggregates information for "plumbing, heating, and air-conditioning contractors," which includes "refrigeration contractors."

According to the 2012 U.S. Census "Industry Snapshot" for NAICS code 238220, there are approximately 87,000 plumbing, heating, and air-conditioning contractor establishments in the United States.[70] Based on detailed breakdowns provided in the 2007 U.S. Census, DOE was able to disaggregate the 87,000 business by contractor type.[71] 35% of the establishments were exclusively plumbing, sprinkler installation, or steam and piping fitting contractors and were unlikely to provide walk-in installation services. Of these remaining 65% of establishments, DOE estimated that 3,400 to 14,100 provide offer walk-in installation services.[72]

U.S. Census data from 2012 show that less than 1% of plumbing, heating, and air-conditioning contracting companies have more than 500 or more employees. While the U.S. Census data show that average revenue per establishment is approximately $1.7 million, the data provide no indication of what the revenue distribution or the median revenue in the industry might be. Assuming that the plumbing, heating, and air-conditioning employment data are representative of those found with walk-in installer employment numbers, the vast majority of installers are small businesses based on a 1,250-person threshold.

4. Description and Estimate of Compliance Requirements

DOE identified two small WICF refrigeration businesses that manufacture refrigeration components used in walk-in applications. One small business focuses on large warehouse refrigeration systems, which are outside the scope of this rulemaking. However, this company offers small capacity units that can be sold to the walk-in market as well. The other small business specializes in building evaporators and unit coolers for a range of refrigeration applications, including the walk-in market. Further, based on manufacturer interviews conducted for the June 2014 final rule, DOE determined that the WICF refrigeration system revenue for this company is small compared to the total revenue.

Conversion costs are the primary driver of negative impacts on WICF refrigeration manufacturers. While there will be record keeping expenses associated with certification and compliance requirements, DOE expects the cost to be small relative to the investments necessary to determine which equipment are compliant, to redesign non-compliant equipment, to purchase and install new manufacturing line equipment, and to update marketing materials. These conversion costs are described in section IV.J.C of this document.

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[65] See *www.ahridirectory.org/ahriDirectory/pages/home.aspx.*

[66] See *http://www.nafem.org/find-members/MemberDirectory.aspx.*

[67] See *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[68] See *www.dnb.com/.*

[69] See *www.hoovers.com/.*

[70] U.S. Census Bureau. Industry Snapshot *thedataweb.rm.census.gov/TheDataWeb_HotReport2/econsnapshot/2012/snapshot.hrml?NAICS=238220.* (Last accessed July 2016)

[71] U.S. Census Bureau. Industyr Statistics Portal *http://www.census.gov/econ/isp/sampler.php?naicscode=238220&naicslevel=6#* (Last accessed August 2016).

[72] In the August 2016 test procedure NOPR for walk-in coolers and walk-in freezers, DOE estimated a different number of walk-in contractors. (81 FR 54926) For this Notice, DOE's used more detailed information from the 2007 U.S. Census to improve the estimated number of walk-in contractors. As a result, the range of potential walk-in contractors estimated in this Notice is lower than the range published in the test procedure NOPR.

Since no market share information for small WICF refrigeration manufacturers is publicly-available, DOE relied on company revenue data for the small and large businesses as proxies for market share. For companies that are diversified conglomerates, DOE used revenue figures from the corporate business unit that produced walk-in refrigeration systems.

TABLE VI–1—AVERAGE SMALL WICF REFRIGERATION MANUFACTURER'S CAPITAL AND PRODUCT CONVERSION COSTS

Trial standard level	Small manufacturer		
	Capital conversion costs (2015$ millions)	Product conversion costs (2015$ millions)	Conversion costs/conversion period revenue * (%)
TSL1	0.00	0.05	0.02
TSL2	0.05	0.11	0.07
TSL3	0.10	0.29	0.18

* Conversion costs are the total investments made over the 3-year compliance period, between the publication of the final rule and the first year of compliance with the proposed standard.

At the proposed standard level, DOE estimates total conversion costs for an average small WICF refrigeration manufacturer to be $0.39 million per year over the three-year conversion period. Using revenue figures from Hoovers.com, DOE estimates that conversion costs are less than one percent of total small business revenue over the three-year conversion period.

DOE estimates that there are approximately 10,000 to 30,000 walk-in installers, and 99% of them are small businesses. Installers of complete walk-ins have been subject to regulation since 2009, when EPCA's prescriptive standards for walk-in coolers and freezers went into effect. EPCA required that all completed walk-ins must: Have automatic door closers; have strip doors, spring hinged doors, or other method of minimizing infiltration when doors are open; for all interior lights, use light sources with an efficacy of 40 lumens per watt or more; contain wall, ceiling, and door insulation of at least R–25 for coolers and R–32 for freezers; contain floor insulation of at least R–28 for freezers; use doors that have certain features; and use certain types of motors in components of the refrigeration system.

This proposal does not propose to add energy conservation standards that would measure the performance of the complete walk-in and does not introduce new responsibilities on installers. Manufacturers who strictly assemble or install complete walk-ins do not certify compliance to DOE. DOE was unable to identify installer conversion costs that would be likely to occur as a direct result of the proposed standards since these costs are borne by component manufacturers. It is possible installers would have stranded assets in the form of refrigeration components inventory that is not compliant with the proposed standards. However, the WICF market involves a high degree of customization—walk-ins can vary dramatically in size, shape, capacity, and end-user application. This suggests that installers do not generally carry significant refrigeration system inventory. Furthermore, installers will have a conversion period, between the publication date and the compliance date of the final rule, to wind-down component surpluses and these components may be used to repair existing units deployed in the field.

DOE requests comment on the number of small WICF refrigeration manufacturers in the industry, data on the market share of those manufacturers, and the conversion costs those manufacturers are likely to incur. Additionally, DOE requests comment on the conversion costs and stranded assets, if any, that installers of walk-ins may incur. This is identified as Issue 16 in section VII.E, "Issues on Which DOE Seeks Comment."

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE found no duplication, overlap, or conflict with other rules and regulations for the rule being proposed here.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 3. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels (there are no levels higher than TSL 3). For all considered efficiency levels, there would be no new responsibilities on assemblers and installers. While TSL 1 and TSL 2 would reduce the impacts on small business WICF refrigeration manufacturers, it would come at the expense of a reduction in energy savings and NPV benefits to consumers. TSL 1 achieves 73 percent lower energy savings and 71 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 3. TSL 2 achieves 28 percent lower energy savings and 24 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 3.

Setting the standards for the refrigeration systems discussed in this document at the TSL 3 level balances the benefits of the energy savings at TSL 3 with the potential burdens placed on WICF refrigeration manufacturers, including small business manufacturers. Accordingly, because of these results, DOE is not proposing to adopt one of the other TSLs or policy alternatives examined as part of DOE's overall analysis. See discussion in section V (discussing the analyzed TSLs) and chapter 17 of the NOPR TSD (examining policy alternatives to setting standards).

Additional compliance flexibilities may be available through other means. For example, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of WICF refrigeration systems must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers will be required to test their equipment according to the DOE test procedures for WICF refrigeration systems, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including WICF refrigeration systems. *See generally* 10 CFR part 429, subpart B. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (''NEPA'') of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (''CX'') B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) Investment in research and development and in capital expenditures by WICF manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency WICF, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), this proposed rule would establish energy conservation standards for the considered WICF equipment classes that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes energy conservation standards for the considered walk-in refrigeration systems, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy, issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id.* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify the Appliance and Equipment Standards Program Staff at (202) 586–6636 or *Appliance_Standards_Public_Meetings@ee.doe.gov.*

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=56.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE seeks comment regarding the method it used for estimating the manufacturing costs related to the equipment discussed in this proposal. See section IV.C.4 for details.

2. DOE seeks input on its analysis of distribution channels in the WICF market. See section IV.D for details.

3. DOE requests comments on the most appropriate trend to use for real (inflation-adjusted) walk-in prices. See section IV.F.2 for details.

4. DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in installation costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. See section IV.F.3 for details.

5. DOE requests comment on its assumption to not consider the impact of a rebound effect for the WICF refrigeration system classes covered in this NOPR. Further, DOE requests any data or sources of literature regarding the magnitude of the rebound effect for the covered WICF refrigeration equipment. See section IV.F.4 for details.

6. DOE requests comment on whether any of the efficiency levels considered in this NOPR might lead to an increase in maintenance and repair costs and, if so, data regarding the magnitude of the increased cost for each relevant efficiency level. See section IV.F.6 for details.

7. DOE seeks comment on the minimum, average, and maximum equipment lifetimes it assumed for the covered classes of WICF refrigeration equipment, and whether or not they are appropriate for all equipment classes and capacities. See section IV.F.7 for details.

8. DOE requests comment on its assumption that all WICF refrigeration systems covered by this rulemaking would be at the baseline efficiency level in the compliance year. See section IV.F.9 for details.

9. DOE seeks comment on the share of equipment sold as individual components versus the share of equipment sold as manufacturer matched equipment. See section IV.G for details.

10. DOE requests comment on its assumption that the WICF refrigeration system efficiency of the classes covered in this proposal would remain unchanged over time in the absence of adopting the proposed standards. See section IV.H for details.

11. DOE seeks additional information on industry capital and product conversion costs that would be required to achieve compliance with the proposed WICF refrigeration systems standards. See section IV.J.3.c for details.

12. DOE requests comment on the appropriateness of assuming a constant manufacturer markup of 1.35 across all equipment classes and efficiency levels for the classes of WICF refrigeration systems discussed in this proposed rulemaking. See section IV.J.3.d for details.

13. DOE requests comment and data on the potential impacts to direct employment levels. See section V.B.2.b for details.

14. DOE requests data on conversion costs (upfront investments necessary ahead of the standard taking effect) and stranded assets manufacturers of complete walk-ins could incur as a result of the proposed standard. DOE also requests comment on any direct burdens on manufacturers of complete walk-ins that would arise as a result of the proposed rule. See section V.B.2.f for details.

15. DOE seeks comment on whether there are features or attributes of more energy-efficient WICF refrigeration systems that manufacturers would

produce to meet the standards in this proposed rule that might affect how they would be used by consumers. DOE requests comment specifically on how any such effects should be weighed in the choice of standards for the final rule. See section V.C.1 for details.

16. DOE requests comment on the number of small WICF refrigeration manufacturers in the industry, data on the market share of those manufacturers, and the conversion costs those manufacturers are likely to incur. Additionally, DOE requests comment on the conversion costs and stranded assets small installers of walk-ins may incur. See section VI.B.4 for details.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 30, 2016.

David Friedman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 431 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. In § 431.306, revise paragraph (e), and add paragraph (f) to read as follows:

§ 431.306 Energy conservation standards and their effective dates.

* * * * *

(e) *Walk-in cooler and freezer refrigeration systems.* All walk-in cooler and walk-in freezer refrigeration systems manufactured starting on June 5, 2017 and before [DATE THREE YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], except for walk-in process cooling refrigeration systems (as defined in 10 CFR 431.302), must satisfy the following standards:

Equipment class	Minimum AWEF (Btu/W-h)
Dedicated Condensing, Medium Temperature, Indoor System	5.61
Dedicated Condensing, Medium Temperature, Outdoor System	7.60

(f) *Walk-in cooler and freezer refrigeration systems.* All walk-in cooler and walk-in freezer refrigeration systems manufactured starting on [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], except for walk-in process cooling refrigeration systems (as defined in 10 CFR 431.302), must satisfy the following standards:

Equipment class	Minimum AWEF (Btu/W-h) *
Dedicated Condensing System—Medium, Indoor	5.61.
Dedicated Condensing System—Medium, Outdoor	7.60.
Dedicated Condensing System—Low, Indoor with a Net Capacity (q_{net}) of:	
<6,500 Btu/h	$9.091 \times 10^{-5} \times q_{net} + 1.81$.
≥6,500 Btu/h	2.40.
Dedicated Condensing System—Low, Outdoor with a Net Capacity (q_{net}) of:	
<6,500 Btu/h	$6.522 \times 10^{-5} \times q_{net} + 2.73$.
≥6,500 Btu/h	3.15.
Unit Cooler—Medium	9.00.
Unit Cooler—Low with a Net Capacity (q_{net}) of:	
<15,500 Btu/h	$1.575 \times 10^{-5} \times q_{net} + 3.91$.
≥15,500 Btu/h	4.15.

* Where q_{net} is net capacity as determined in accordance with 10 CFR 431.304 and certified in accordance with 10 CFR part 429.

[FR Doc. 2016–21583 Filed 9–12–16; 8:45 am]

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